FOOD AND DRUGS ACT

NOTICES OF JUDGMENT Nos. 4001-4500

UNITED STATES
DEPARTMENT OF AGRICULTURE

S. R. A.—Chem. Suppl. 11. Issued February 4, 1916.

U. S. DEPARTMENT OF AGRICULTURE,

BUREAU OF CHEMISTRY.

C. L. ALSBERG, Chief of Bureau.

SERVICE AND REGULATORY ANNOUNCEMENTS.

SUPPLEMENT.

N. J. 4001–4050.

NOTICES OF JUDGMENT UNDER THE FOOD AND DRUGS ACT.

[Given pursuant to section 4 of the Food and Drugs Act.]

4001. Adulteration and misbranding of raisin brandy. U. S. * * * v. 10 Cases of * * * Raisin Brandy. Consent decree of condemnation and forfeiture. Product ordered released on bond. (F. & D. No. 6376. I. S. No. 2744-k. S. No. E-232.)

On March 17, 1915, the United States attorney for the District of Massachusetts, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel of information praying for the seizure and condemnation of 10 cases of a product purporting to be raisin brandy, remaining unsold in the original unbroken packages at Boston, Mass., alleging that the product had been shipped and transported from the State of Pennsylvania into the State of Massachusetts, and charging adulteration and misbranding in violation of the Food and Drugs Act.

Adulteration of the product was alleged in the information because substances, to wit, dilute spirits, had been mixed and packed with said food in such a manner as to reduce, lower, and injuriously affect its quality and strength, and for the further reason that substances, to wit, dilute spirits, had been substituted in part for said food.

Misbranding of the product was alleged for the reason that said food, upon the packages and labels thereof, bore certain statements, designs, and devices regarding the ingredients and substances contained in said food, that is to say, the following words: "Mount Ephraim Raisin Brandy. Mount Ephraim Raisin Brandy made expressly for Easter Holidays." (In a foreign language translated into English to read, "Mount Ephraim Raisin Brandy Kosher for Passover." "Mount Ephraim Kosher for Passover White Raisin Brandy") and the words "The contents of this bottle is a compound and modified especially for the Easter Holidays," displayed upon each bottle in each of said cases in an inconspicuous manner, which statements, designs, and devices were false and misleading because they would lead the purchasers to believe that said food consisted of raisin brandy, whereas, in truth and in fact, it did not consist of raisin brandy.

On May 4, 1915, Meyer Margulis, Philadelphia, Pa., claimant, having filed his claim and answer, consenting to a decree and having filed a satisfactory bond, in conformity with section 10 of the act, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be delivered to said claimant upon payment of the costs of the proceedings.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *July 19, 1915.*

19275°—16——1

4002. Adulteration of tomato puree or pulp. U. S. * * * v. 45 Cases * * * of Tomato Pulp. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 6385. I. S. No. 11653-k. S. No. C-185.)

On March 19, 1915, the United States attorney for the Southern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 45 cases, each containing 48 cans of tomato pulp, remaining unsold in the original unbroken packages at Cincinnati, Ohio, alleging that the product had been shipped and transported from the State of Kentucky into the State of Ohio, and charging adulteration in violation of the Food and Drugs Act. The product was labeled: (On cases) "4 Doz. No. 1 Blue Grass Tomato Pulp—Louis Stein Co., Cincinnati, O." (On cans) "Tomato Puree or Pulp—This package contains ripe tomato juice, condensed, especially suited for dressing fish, oysters, meats, etc. Adapted to the making of home made catsup * * * Contents about 9 ozs. Blue Grass Brand Trade Mark—Blue Grass Canning Co. Owensboro, Ky., U. S. A."

It was alleged in the libel that the article was adulterated within the meaning of the Food and Drugs Act in that said article of food contained and in part consisted of a decomposed vegetable substance.

On May 8, 1915, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *July 19, 1915.*

4003. Misbranding of macaroni. U. S. * * * v. 280 Boxes * * * of Macaroni. Consent decree of condemnation and forfeiture. Product ordered released on bond. (F. & D. No. 6389. I. S. No. 14402-k. S. No. C-184.)

On March 22, 1915, the United States attorney for the Southern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 280 boxes of macaroni, remaining unsold in the original unbroken packages at Cincinnati, Ohio, alleging that the product had been shipped and transported in interstate commerce from the State of New York into the State of Ohio, and charging misbranding, in violation of the Food and Drugs Act. The product was labeled: "Macaroni—Savoia Brand—Gragnano," together with a representation of the shield of the Italian coat of arms, all superimposed upon a lithographic representation of an Italian coast scene; and also the words "Made in America" in small and inconspicuous type, and placed upon said boxes and said labels by means of a rubber stamp.

It was alleged in the libel that the article of food was misbranded in the following particulars, to wit:

(1) That the afore-described labels, marks, and brands upon said article of food, bearing the afore-described statements, designs, and devices, regarding the said article, when taken in their entirety, were false and misleading in that they created the impression in the mind of the purchaser that such article of food was a foreign product, to wit, a product of Italy, whereas, in truth and in fact, said article of food was a domestic product made in the United States of America.

(2) That said article of food purported to be a foreign product, to wit, a product of Italy, whereas, in truth and in fact, it was not so, but was a domestic product made in the United States of America.

On April 6, 1915, the Atlantic Macaroni Co., Brooklyn, N. Y., claimant, having filed its claim and answer, admitting the facts set forth in the libel and consenting to the entry of a decree, judgment of condemnation and forfeiture was entered, and it appearing to the court that the labels and brands upon the boxes of macaroni might be altered so that said article of food might be sold lawfully and without violating any law of any State or of the United States, it was ordered by the court that said boxes of macaroni should be relabeled under the supervision of a United States food and drug inspector and that the United States marshal should release and restore to said claimant company the product, upon payment of all the costs of the proceedings and the execution of a bond in the sum of $500, in conformity with section 10 of the act.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *July 19, 1915.*

4004. Adulteration of frozen fish. U. S. * * * v. 13 Boxes of Frozen Fish. Default decree of condemnation, forfeiture, and destruction. (F. & D. Nos. 6413, 6414, 6415, 6416, 6417, 6418. S. No. E-237.)

On March 31, 1915, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 13 boxes of frozen fish, remaining unsold in the original unbroken packages at New York, N. Y., alleging that the product had been shipped on or about March 26, 1915, and transported from the State of Massachusetts into the State of New York, and charging adulteration in violation of the Food and Drugs Act.

It was alleged in the libel that the product was adulterated contrary to the provisions of the Food and Drugs Act in that said article of food consisted in particular [part] of a filthy, decomposed, and putrid animal substance, to wit, fish, contrary to the provisions of section 7, subdivision 6, under "Food," of said Food and Drugs Act.

On April 19, 1915, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *July 19, 1915.*

4005. Adulteration of tomato pulp. U. S. * * * v. 25 Cases of Tomato Pulp. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 6456. I. S. No. 3619-k. S. No. E-249.)

On April 22, 1915, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 25 cases, each containing 4 dozen cans of tomato pulp, remaining unsold in the original unbroken packages at New York, N. Y., alleging that the product had been shipped on or about April 15, 1915, and transported from the State of Maryland into the State of New York, and charging adulteration in violation of the Food and Drugs Act. The product was labeled: "Fox Creek Brand Tomato Pulp, Made from Pieces and Trimmings of Tomatoes, Packed by J. Frank Hearn, Wingate, Md., Guaranteed by J. Frank Hearn under the Food & Drugs Act, June 30, 1906. Serial No. 9602. Weight contents 10 oz., Fox Creek Brand, Packed by J. Frank Hearn, Wingate, Md. (picture of fox jumping across a stream)."

It was alleged in the libel that the tomato pulp was adulterated contrary to the provisions of the Food and Drugs Act, in that the said article of food consisted in part of a partially decomposed vegetable product, to wit, decayed tomato, contrary to the provisions of section 7, subdivision 6, under "Food," of the said Food and Drugs Act.

On May 14, 1915, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *July 19, 1915.*

4006. Adulteration of milk. U. S. v. Raymond E. Snyder. Plea of guilty. Fine, $10. (F. & D. No. 279–c.)

On April 8, 1915, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the police court of the District aforesaid an information against Raymond E. Snyder, Gaithersburg, Md., alleging the shipment by said defendant, in violation of the Food and Drugs Act, on March 8, 1915, from the State of Maryland into the District of Columbia, of a quantity of milk which was adulterated.

Adulteration of the product was alleged in the information for the reason that a certain substance, to wit, water, had been mixed and packed with said food so as to reduce and lower and injuriously affect its quality and strength.

On April 8, 1915, the defendant entered a plea of guilty to the information, and the court imposed a fine of $10.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *July 19, 1915.*

4007. Adulteration of cheese. U. S. v. Fred M. Emrich. Plea of guilty. Fine, $10. (F. & D. No. 280–c.)

On April 22, 1915, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the police court of the District aforesaid an information against Fred M. Emrich, Washington, D. C., alleging the sale by said defendant, on January 20, 1915, at the District aforesaid, and in violation of the Food and Drugs Act, of a quantity of cheese which was adulterated.

Adulteration of the product was alleged in the information for the reason that a valuable constituent of said article of food, to wit, butter fat, had been left out and abstracted in whole or in part.

On April 22, 1915, the defendant entered a plea of guilty to the information, and the court imposed a fine of $10.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *July 19, 1915.*

4008. Adulteration of cheese. U. S. v. John Gabriel. Plea of guilty. Fine, $10. (F. & D. No. 281-c.)

On April 22, 1915, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the police court of the District aforesaid an information against John Gabriel, Washington, D. C., alleging the sale by said defendant, on January 13, 1915, at the District aforesaid, and in violation of the Food and Drugs Act, of a quantity of cheese which was adulterated.

Adulteration of the product was alleged in the information for the reason that a valuable constituent of said article of food, to wit, butter fat, had been left out and abstracted in whole or in part.

On April 22, 1915, the defendant entered a plea of guilty to the information, and the court imposed a fine of $10.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *July 19, 1915.*

4009. Adulteration of cheese. U. S. v. Israel Abramson. Plea of guilty. Fine, $10. (F. & D. No. 282-c.)

On April 22, 1915, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the police court of the District aforesaid an information against Israel Abramson, Washington, D. C., alleging the sale by said defendant, on January 11, 1915, at the District aforesaid, and in violation of the Food and Drugs Act, of a quantity of cheese which was adulterated.

Adulteration of the product was alleged in the information for the reason that a valuable constituent of said article of food, to wit, butter fat, had been left out and abstracted in whole or in part.

On April 22, 1915, the defendant entered a plea of guilty to the information, and the court imposed a fine of $10.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *July 19, 1915.*

19275°—16——2

4010. Adulteration of chocolate, flour, candy, dried apples, and seeded raisins, and misbranding of sirup and vinegar. U. S. * * * v. * * * 2 Carloads of Sirup Compound; 200 Bottles of Vinegar Compound; 40 Pounds of Chocolate; 200 Sacks of Flour; 40 Buckets of Candy; 40 Pounds of Dried Apples; and 40 Pounds of Raisins. Products ordered released on bond. (F. & D. No. 215-c. I. S. Nos. 855-h, 865-h, 866-h, 869-h, 870-h, 872-h, 873-h, 880-h, 881-h, 882-h. S. No. 2077.)

On January 2, 1914, the United States attorney for the Northern District of Texas, acting upon a report by the Food and Drugs Commissioner of the State of Texas, authorized by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 2 carloads, more or less, of sirup compound, 200 bottles, more or less, of vinegar compound, 40 pounds, more or less, of chocolate, 200 sacks, more or less, of flour, 40 buckets, more or less, of candy, 40 pounds, more or less, of dried apples, and 40 pounds, more or less, of seeded raisins, remaining unsold in the original packages at Fort Worth, Tex., alleging that the products had been shipped on December 8 and 11, 1913, and transported from the State of Oklahoma into the State of Texas, and charging adulteration and misbranding in violation of the Food and Drugs Act.

It was alleged in the libel that the sirup was a sirup compound in imitation of ribbon-cane sirup and that the same was misbranded in that there were no labels on the cans in which said sirup was contained and offered for sale, and that said sirup was being sold without any labels thereon whatsoever and was being sold under the distinctive name of another article altogether, to wit, "Ribbon Cane Syrup," whereas, in truth and in fact, the sirup was an imitation of ribbon-cane sirup and glucose and other compounds.

It was further alleged that the vinegar compound was composed of distilled vinegar and sugar vinegar and that the same was misbranded in that the bottles containing said vinegar compound and in which the same was being sold and offered for sale were not labeled and contained no labels whatsoever and were being sold and offered for sale under the distinctive name of another article, to wit, "vinegar," which name means and implies apple vinegar, whereas, in truth and in fact, the said vinegar compound, composed as aforesaid and being sold and offered for sale as aforesaid, was a mere imitation of apple vinegar. It was further alleged that the chocolate, the flour, the candy, the dried apples, and the seeded raisins consisted of filthy and decomposed vegetable substances.

On April 11, 1914, Harry Byrens and Philip Cooles, doing business under the name of the American Salvage Co., Fort Worth, Tex., claimants, having executed a good and sufficient bond in the sum of $1,000, conditioned that they would dispose of the products in accordance with law and not in violation of the laws of the United States of America, it was ordered, adjudged, and decreed by the court that the United States marshal should deliver to said claimants all of the goods above described.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *October 26, 1915.*

4011. Adulteration and misbranding of evaporated apples. U. S. * * * v. 15 Boxes of Evaporated Apples, etc. Decree of condemnation and forfeiture. Product ordered destroyed. (F. & D. No. 265-c.)

On December 23, 1914, the United States attorney for the District of North Dakota, acting upon a report by the pure food commissioner for the State of North Dakota, authorized by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 15 boxes of evaporated apples (25-pound size), 20 boxes of evaporated apples (50-pound size), and 4 cases, each containing 50 15-ounce cartons of evaporated apples, remaining unsold in the original unbroken packages at Bismarck, N. Dak., alleging that the product had been shipped and transported from the State of Arkansas into the State of North Dakota, and charging adulteration and misbranding in violation of the Food and Drugs Act. The product was labeled: "Evaporated Apples, Star Brand, Packed by Ladd Bros., Fayetteville, Ark., Selected Fruit Carefully Packed."

It was alleged in the libel that the product was adulterated in that it was in part composed of a filthy, decomposed, putrid animal or vegetable substance, unfit for food. It was further alleged that the product consisted in part of a filthy, decomposed, putrid animal or vegetable substance, unfit for food, in that said product contained excreta, dirt, and maggots, and was moldy, worm-eaten, and defective, and was not "selected fruit carefully packed." It was further alleged that the product was not fit for use, but, on the contrary, contained filthy, decomposed, putrid vegetable and [or] animal substance, in that said product consisted in part of excreta, dirt, and maggots, and was moldy, worm-eaten, defective, and made up in part of decomposed and putrid animal and [or] vegetable substance, none of the apples being fit for food.

Misbranding of the product was alleged for the reason that the cartons were labeled as containing 15 ounces, whereas, in fact, they contained a less quantity. It was further alleged that the labels upon the boxes of the product were deceptive, false, and misleading, and that the product was misbranded contrary to law in such a manner as to deceive the general public. It was further alleged that the labels on the packages and cartons, set forth above, bore a statement relative to said evaporated apples which was false and misleading and that the aforesaid product, hereinbefore described, was so labeled and branded as to deceive and mislead the purchaser.

On December 31, 1914, the case having come on for hearing before the court, upon the libel and answer theretofore filed by the Bismarck Grocery Co., and the court having heard the evidence, and it appearing to the satisfaction of the court that the property was misbranded and adulterated contrary to the statute in such case made and provided, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *October 26, 1915.*

4012. Adulteration of cream. U. S. v. John D. Ficklin. Plea of guilty. Fine, $5. (F. & D. No. 283-c.)

On April 14, 1915, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the police court of the District aforesaid an information against John D. Ficklin, Bealton, Va., alleging the shipment by said defendant, in violation of the Food and Drugs Act, on March 24, 1915, from the State of Virginia into the District of Columbia, of a quantity of cream which was adulterated.

Adulteration was alleged in the information for the reason that a valuable constituent of said article of food, to wit, butter fat, had been left out and abstracted in whole or in part.

On April 14, 1915, the defendant entered a plea of guilty to the information, and the court imposed a fine of $5.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *October 26, 1915.*

4013. Misbranding of cider. U. S. v. Ernest S. Brown. Plea of guilty. Fine, $25. (F. & D. No. 284–c.)

On May 6, 1915, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the police court of the District aforesaid an information against Ernest S. Brown, Washington, D. C., alleging the sale by said defendant, on December 28, 1915 [1914], at the District aforesaid and in violation of the Food and Drugs Act, of a quantity of cider which was misbranded.

Misbranding of the article was alleged in the information for the reason that it was offered for sale and sold as pure cider, whereas, in truth and in fact, it was not a pure cider, but a cider made up, among other ingredients, of benzoate of soda, and said cider was further misbranded and was calculated to deceive and mislead the purchaser in that it was offered for sale and was sold as cider, meaning thereby that it was a pure cider without containing any foreign substance or substances, whereas, in truth and in fact, it contained a foreign substance, to wit, benzoate of soda, the amount and quantity of which said substance was not plainly and conspicuously marked on the container thereof.

On May 6, 1915, the defendant entered a plea of guilty to the information, and the court imposed a fine of $25.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *October 26, 1915.*

4014. Adulteration of cream. U. S. v. Charles G. Geisbert. Plea of guilty. Fine, $10. (F. & D. No. 285–c.)

On May 4, 1915, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the police court of the District aforesaid an information against Charles G. Geisbert, Buckeyestown, Md., alleging shipment by said defendant, in violation of the Food and Drugs Act, on March 19, 1915, from the State of Maryland into the District of Columbia, of a quantity of cream which was adulterated.

It was alleged in the information that said food was adulterated in that a valuable constituent of the article of food had been left out and abstracted in whole and in part.

On May 4, 1915, the defendant entered a plea of guilty to the information, and the court imposed a fine of $10.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *October 26, 1915.*

4015. Adulteration of cream. U. S. v. Albert A. Boyer. Plea of guilty. Fine, $5. (F. & D. No. 286-c.)

On June 15, 1915, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the police court of the District aforesaid an information against Albert A. Boyer, Washington, D. C., alleging the sale by said defendant, on April 27, 1915, at the District aforesaid, and in violation of the Food and Drugs Act, of a quantity of cream which was adulterated.

It was alleged in the information that the food was adulterated in that a valuable constituent of the article of food had been left out and abstracted in whole and in part.

On June 15, 1915, the defendant entered a plea of guilty to the information, and the court imposed a fine of $5.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *October 26, 1915.*

4016. Adulteration of cream. U. S. v. David M. Souder. Plea of guilty. Fine, $5. (F. & D. No. 287-c.)

On June 11, 1915, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the police court of the District aforesaid an information against David M. Souder, Lander, Md., alleging shipment by said defendant, in violation of the Food and Drugs Act, on May 10, 1915, from the State of Maryland into the District of Columbia, of a quantity of cream which was adulterated.

It was alleged in the information that the food was adulterated in that a valuable constituent of the article of food, to wit, butter fat, had been left out and abstracted in whole and in part.

On June 11, 1915, the defendant entered a plea of guilty to the information, and the court imposed a fine of $5.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *October 26, 1915.*

4017. Adulteration of milk. U. S. v. Beriah W. Head. Plea of guilty. Fine, $10. (F. & D No. 288–c.)

On June 9, 1915, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the police court of the District aforesaid an information against Beriah W. Head, Vienna, Va., alleging shipment by said defendant, in violation of the Food and Drugs Act, on May 5, 1915, from the State of Virginia into the District of Columbia, of a quantity of milk which was adulterated.

It was alleged in the information that the food was adulterated in that a certain substance, to wit, water, had been mixed and packed with the said food so as to reduce and lower and injuriously affect its quality and strength.

On June 9, 1915, the defendant entered a plea of guilty to the information, and the court imposed a fine of $10.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *October 26, 1915.*

19275°—16——3

4018. Misbranding of tincture of iodin. U. S. v. Walter P. Napper. Plea of guilty. Fine, $5. (F. & D. No. 290-c.)

On July 19, 1915, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the police court of the District aforesaid an information against Walter P. Napper, Washington, D. C., alleging that said defendant, on April 13, 1915, at the District aforesaid, unlawfully did offer for sale and sell a quantity of tincture of iodin which was misbranded in violation of the Food and Drugs Act.

It was alleged in the information that the drug was misbranded and was labeled so as to mislead and deceive the purchaser, in that said tincture of iodin was composed largely of alcohol, and the label on the bottle thereof failed to state the quantity and proportion of alcohol contained therein.

On July 22, 1915, the defendant entered a plea of guilty to the information, and the court imposed a fine of $5.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *October 26, 1915.*

4019. Adulteration and misbranding of tincture of iodin. U. S. v. William H. McClure. Plea of guilty. Fine, $10. (F. & D. No. 291-c.)

On July 19, 1915, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the police court of the District aforesaid an information against William H. McClure, Washington, D. C., alleging that said defendant on April 8, 1915, at the District aforesaid, unlawfully did offer for sale and sell a quantity of tincture of iodin which was adulterated and misbranded in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the information for the reason that it was offered for sale and was sold under and by a name, to wit, tincture of iodin, which said name was recognized in the United States Pharmacopœia official at the time of investigation, and that the said drug differed from the standard of strength and purity as determined by the test laid down in the said United States Pharmacopœia official at the time of investigation.

It was further alleged in the information that the drug was misbranded and was labeled so as to deceive and mislead the purchaser, in that the label on the bottle thereof bore the words and phrase "Tincture of Iodine," meaning and importing to the purchaser thereof that the product was a tincture of iodin conforming to the standard set forth in the United States Pharmacopœia, whereas, in truth and in fact, it was not.

On July 28, 1915, the defendant entered a plea of guilty to the information, and the court imposed a fine of $10.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *October 26, 1915.*

4020. Adulteration and misbranding of tincture of iodin. U. S. v. William K. Mitchell. Plea of guilty. Fine, $10. (F. & D. No. 292-c.)

On July 19, 1915, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the police court of the District aforesaid an information against William K. Mitchell, Washington, D. C., alleging that said defendant on April 6, 1915, at the District aforesaid, unlawfully did offer for sale and sell a quantity of tincture of iodin which was adulterated and misbranded in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the information for the reason that it was offered for sale and was sold under and by a name, to wit, tincture of iodin, which said name was recognized in the United States Pharmacopœia official at the time of investigation, and that the said drug differed from the standard of strength and purity as determined by the test laid down in the said United States Pharmacopœia official at the time of investigation.

It was further alleged in the information that the drug was misbranded and was labeled so as to deceive and mislead the purchaser, in that the label on the bottle thereof bore the words and phrase "Tincture of Iodine," meaning and importing to the purchaser thereof that the product was a tincture of iodin conforming to the standard set forth in the United States Pharmacopœia, whereas, in truth and in fact, it was not.

On July 28, 1915, the defendant entered a plea of guilty to the information, and the court imposed a fine of $10.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *October 26, 1915.*

4021. Adulteration of milk. U. S. v. Henry H. Blunt. Plea of guilty. Fine, $30. (F. & D. No. 293-c.)

On June 28, 1915, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the police court of the District aforesaid an information in 6 counts against Henry H. Blunt, of Accotink, Va., alleging shipment by said defendant, in violation of the Food and Drugs Act, on May 15, 1915, from the State of Virginia into the District of Columbia, of quantities of milk which was adulterated.

Adulteration of the article was alleged in 5 of the counts of the information for the reason that a certain substance, to wit, water, had been mixed and packed with said food so as to reduce and lower and injuriously affect its quality and strength; adulteration was alleged in the other count of the information for the reason that a valuable constituent of said article of food, to wit, butter fat, had been left out and abstracted in whole or in part, and with which a substance, to wit, water, had been mixed so as to reduce and lower and injuriously affect its quality and strength.

On June 28, 1915, the defendant entered a plea of guilty to the information, and the court imposed a fine of $30.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *October 26, 1915.*

4022. Adulteration of cream. U. S. v. George A. T. Snouffer. Plea of guilty. Fine, $5. (F. & D. No. 294–c.)

On May 15, 1915, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the police court of the District aforesaid an information against George A. T. Snouffer, Washington, D. C., alleging the sale by said defendant, on April 24, 1915, at the District aforesaid, and in violation of the Food and Drugs Act, of a quantity of cream which had been adulterated.

It was alleged in the information that the food was adulterated in that a valuable constituent of the article of food had been left out and abstracted in whole and in part.

On May 15, 1915, the defendant entered a plea of guilty to the information, and the court imposed a fine of $5.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *October 26, 1915.*

4023. Adulteration and misbranding of tincture of iodin. U. S. v. William F. Work. Plea of guilty. Fine, $10. (F. & D. No. 295-c.)

On July 19, 1915, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the police court of the District aforesaid an information against William F. Work, Washington, D. C., alleging that said defendant, on April 16, 1915, at the District aforesaid, unlawfully did offer for sale and sell a quantity of tincture of iodin which was adulterated and misbranded in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the information for the reason that it was offered for sale and was sold under and by a name, to wit, tincture of iodin, which said name was recognized in the United States Pharmacopœia official at the time of investigation, and that the said drug differed from the standard of strength and purity as determined by the test laid down in the said United States Pharmacopœia official at the time of investigation.

It was further alleged in the information that the drug was misbranded and was labeled so as to deceive and mislead the purchaser, in that the label on the bottle thereof bore the words and phrase "Tincture of Iodine," meaning and importing to the purchaser thereof that the product was a tincture of iodin conforming to the standard set forth in the United States Pharmacopœia, whereas, in truth and in fact, it was not.

On July 19, 1915, the defendant entered a plea of guilty to the information, and the court imposed a fine of $10.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *October 26, 1915.*

4024. Adulteration and misbranding of tincture of iodin. U. S. v. John A. Nelson. Plea of guilty. Fine, $10. (F. & D. No. 296–c.)

On July 20, 1915, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the police court of the District aforesaid an information against John A. Nelson, Washington, D. C., alleging that said defendant, on April 14, 1915, at the District aforesaid, unlawfully did offer for sale and sell a quantity of tincture of iodin which was adulterated and misbranded in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the information for the reason that it was offered for sale and was sold under and by a name, to wit, tincture of iodin, which said name was recognized in the United States Pharmacopœia official at the time of investigation, and that the said drug differed from the standard of strength and purity as determined by the test laid down in the said United States Pharmacopœia official at the time of investigation.

It was further alleged in the information that the drug was misbranded and was labeled so as to deceive and mislead the purchaser, in that the label on the bottle thereof bore the words and phrase "Tincture of Iodine," meaning and importing to the purchaser thereof that the product was a tincture of iodin conforming to the standard set forth in the United States Pharmacopœia, whereas, in truth and in fact, it was not.

On July 20, 1915, the defendant entered a plea of guilty to the information, and the court imposed a fine of $10.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *October 26, 1915.*

4025. Adulteration and misbranding of tincture of iodin. U. S. v. E. R. Allaband. Plea of guilty. Fine, $10. (F. & D. No. 297–c.)

On July 19, 1915, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the police court of the District aforesaid an information against E. R. Allaband, Washington, D. C., alleging that said defendant, on April 28, 1915, at the District aforesaid, unlawfully did offer for sale and sell a quantity of tincture of iodin which was adulterated and misbranded in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the information for the reason that it was offered for sale and was sold under and by a name, to wit, tincture of iodin, which said name was recognized in the United States Pharmacopœia official at the time of investigation, and that the said drug differed from the standard of strength and purity as determined by the test laid down in the said United States Pharmacopœia official at the time of investigation.

It was further alleged in the information that the drug was misbranded and was labeled so as to deceive and mislead the purchaser, in that the label on the bottle thereof bore the words and phrase "Tincture of Iodine," meaning and importing to the purchaser thereof that the product was a tincture of iodin conforming to the standard set forth in the United States Pharmacopœia, whereas, in truth and in fact, it was not.

On July 29, 1915, the defendant entered a plea of guilty to the information, and the court imposed a fine of $10.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *October 26, 1915.*

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4026. Adulteration and misbranding of tincture of iodin. U. S. v. Joseph F. Arth. Plea of guilty. Fine, $10. (F. & D. No. 298–c.)

On July 19, 1915, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the police court of the District aforesaid an information against Joseph F. Arth, Washington, D. C., alleging that said defendant, on April 23, 1915, at the District aforesaid, unlawfully did offer for sale and sell a quantity of tincture of iodin which was adulterated and misbranded in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the information for the reason that it was offered for sale and was sold under and by a name, to wit, tincture of iodin, which said name was recognized in the United States Pharmacopœia official at the time of investigation, and that the said drug differed from the standard of strength and purity as determined by the test laid down in the said United States Pharmacopœia official at the time of investigation.

It was further alleged in the information that the drug was misbranded and was labeled so as to deceive and mislead the purchaser, in that the label on the bottle thereof bore the words and phrase "Tincture of Iodine", meaning and importing to the purchaser thereof that the product was a tincture of iodin conforming to the standard set forth in the United States Pharmacopœia, whereas, in truth and in fact, it was not.

On July 29, 1915, the defendant entered a plea of guilty to the information, and the court imposed a fine of $10.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *October 26, 1915.*

4027. Adulteration and misbranding of tincture of iodin. U. S. v. C. P. C. Timberman. Plea of guilty. Fine, $10. (F. & D. No. 299–c.)

On July 19, 1915, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the police court of the District aforesaid an information against C. P. C. Timberman, Washington, D. C., alleging that said defendant, on April 13, 1915, at the District aforesaid, unlawfully did offer for sale and sell a quantity of tincture of iodin which was adulterated and misbranded in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the information for the reason that it was offered for sale and was sold under and by a name, to wit, tincture of iodin, which said name was recognized in the United States Pharmacopœia official at the time of investigation, and that the said drug differed from the standard of strength and purity as determined by the test laid down in the said United States Pharmacopœia official at the time of the investigation.

It was further alleged in the information that the drug was misbranded and was labeled so as to deceive and mislead the purchaser, in that the label on the bottle thereof bore the words and phrase "Tincture of Iodine", meaning and importing to the purchaser thereof that the product was a tincture of iodin conforming to the standard set forth in the United States Pharmacopœia, whereas, in truth and in fact, it was not.

On July 29, 1915, the defendant entered a plea of guilty to the information, and the court imposed a fine of $10.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *October 26, 1915.*

4028. Adulteration and misbranding of tincture of iodin. U. S. v. William L. Smith. Plea of guilty. Fine, $10. (F. & D. No. 300–c.)

On July 19, 1915, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the police court of the District aforesaid an information against William L. Smith, Washington, D. C., alleging that said defendant, on April 19, 1915, at the District aforesaid, unlawfully did offer for sale and sell a quantity of tincture of iodin which was adulterated and misbranded in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the information for the reason that it was offered for sale and was sold under and by a name, to wit, tincture of iodin, which said name was recognized in the United States Pharmacopœia official at the time of investigation, and that the said drug differed from the standard of strength and purity as determined by the test laid down in the said United States Pharmacopœia official at the time of investigation.

It was further alleged in the information that the drug was misbranded and was labeled so as to deceive and mislead the purchaser, in that the label on the bottle thereof bore the words and phrase "Tincture of Iodine," meaning and importing to the purchaser thereof that the product was a tincture of iodin conforming to the standard set forth in the United States Pharmacopœia, whereas, in truth and in fact, it was not.

On July 29, 1915, the defendant entered a plea of guilty to the information, and the court imposed a fine of $10.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *October 26, 1915.*

4039. Adulteration and misbranding of tincture of iodin. U. S. v. John W. Morse. Plea of guilty. Fine, $10. (F. & D. No. 301-c.)

On July 19, 1915, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the police court of the District aforesaid an information against John W. Morse, Washington, D. C., alleging that said defendant, on April 9, 1915, at the District aforesaid, unlawfully did offer for sale and sell a quantity of tincture of iodin which was adulterated and misbranded in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the information for the reason that it was offered for sale and was sold under and by a name, to wit, tincture of iodin, which said name was recognized in the United States Pharmacopœia official at the time of investigation, and that the said drug differed from the standard of strength and purity as determined by the test laid down in the said United States Pharmacopœia official at the time of investigation.

It was further alleged in the information that the drug was misbranded and was labeled so as to deceive and mislead the purchaser, in that the label on the bottle thereof bore the words and phrase "Tincture of Iodine," meaning and importing to the purchaser thereof that the product was a tincture of iodin conforming to the standard set forth in the United States Pharmacopœia, whereas, in truth and in fact, it was not.

On July 29, 1915, the defendant entered a plea of guilty to the information, and the court imposed a fine of $10.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *October 26, 1915.*

4030. Adulteration and misbranding of tincture of iodin. U. S. v. Norville V. Pattie. Plea of guilty. Fine, $10. (F. & D. No. 302-c.)

On July 19, 1915, the United States attorney for the District of Columbia, acting upon a report by the health officer of said district, authorized by the Secretary of Agriculture, filed in the police court of the District aforesaid an information against Norville V. Pattie, Washington, D. C., alleging that said defendant, on April 16, 1915, at the district aforesaid, unlawfully did offer for sale and sell a quantity of tincture of iodin which was adulterated and misbranded in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the information for the reason that it was offered for sale and was sold under and by a name, to wit, tincture of iodin, which said name was recognized in the United States Pharmacopœia official at the time of investigation, and that the said drug differed from the standard of strength and purity as determined by the test laid down in the said United States Pharmacopœia official at the time of investigation.

It was further alleged in the information that the drug was misbranded and was labeled so as to deceive and mislead the purchaser, in that the label on the bottle thereof bore the words and phrase "Tincture of Iodine," meaning and importing to the purchaser thereof that the product was a tincture of iodin conforming to the standard set forth in the United States Pharmacopœia, whereas, in truth and in fact, it was not.

On July 29, 1915, the defendant entered a plea of guilty to the information, and the court imposed a fine of $10.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *October 26, 1915.*

4031. Adulteration of oats. U. S. v. 1 Carload of Oats. Consent decree of condemnation and forfeiture. Product ordered released on bond. (F. & D. No. 303-c.)

On July 24, 1915, the United States attorney for the Eastern District of Virginia, acting upon a report by the dairy and food commissioner of Virginia, authorized by the Secretary of Agriculture, filed in the District Court of the United States for the Eastern District of Virginia a libel for the seizure and condemnation of 1 carload of oats remaining unsold and unloaded from the car in or near the city of Richmond, Va., alleging that the product had been shipped on or about July 8, 1915, by the Mueller & Young Grain Co., Chicago, Ill., and transported from the State of Illinois into the State of Virginia, for export to a foreign country, and charging adulteration in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the libel for the reason that the same had been mixed and packed with certain other substances, to wit, corn and chaff and other substances, so as to reduce and lower and injuriously affect its quality and strength, and for the further reason that certain substances, to wit, corn and chaff and other substances, had been substituted in part for oats.

On July 31, 1915, the said Mueller & Young Grain Co., claimant, having admitted the allegations of the libel, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be released to said claimant company upon payment of the costs of the proceeding and the execution of bond in the sum of $1,000, in conformity with section 10 of the act.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *November 4, 1915.*

4032 (Supplement to Notice of Judgment 1455). Alleged adulteration and misbranding of coca cola. U. S. v. 40 Barrels and 20 Kegs of Coca Cola. Decision of the United States Circuit Court of Appeals, affirming the judgment of the district court which ordered the dismissal of the libel. Pending on writ of error in the Supreme Court of the United States. (F. & D. No. 966. S. No. 352.)

On April 15, 1911, the United States attorney for the Eastern District of Tennessee filed a motion in the District Court of the United States for said district to set aside the verdict theretofore rendered by a jury and grant a new trial in the case of the United States *v.* 40 Barrels and 20 Kegs of Coca Cola. On June 8, 1911, the foregoing motion was overruled, as will more fully appear from the following decision by the court (Sanford, *J.*):

After careful consideration of the motion for a new trial I am of the opinion that the same should be overruled.

In the main the motion presents in its various grounds the same construction of the Food and Drugs Act and the same argument in support thereof derived from the congressional debates and other sources which were urged with great force in behalf of the libelant in the oral argument which preceded the granting of the motion for peremptory instructions, and which set forth a construction of the Food and Drugs Act in which, after careful consideration, I was unable to concur.

In view of the fact that the reasons which in my opinion lead to the construction of the act upon which the claimant's motion for peremptory instructions was sustained were fully stated at the time, I deem it unnecessary to repeat what was then said, but only add that I think the conclusion reached in reference to the question of a "distinctive name" finds some support in the opinion of Judge Hazel in the matter of the misbranding of flavoring extracts (Notice of Judgment No. 806, F. & D. Act, pp. 4 and 6) as well as in the charge of Judge Sanborn in the matter of misbranding of "Mapleine" (Notice of Judgment No. 163, F. & D. Act, p. 3). Further, the ruling as to the force and effect of the word "added" as used in the act in connection with deleterious ingredients finds some support in the opinion of Judge Landis in the case of the United States *v.* 1950 Boxes of Macaroni, 181 Fed. Rep. 427, although it is undoubtedly true that in some other reported cases in the notices of judgment under the Food and Drugs Act the force and effect of the word "added" seem to have been overlooked and neither called to the attention of the court nor considered by it.

2. Neither can I think that the effect to be given to the distinctive name coca cola under the act is taken away by the fact that in the earlier process of its manufacture there was a slight trace of cocaine in the compound which it has not contained in recent years for two reasons:

First. This slight trace of cocaine which the product formerly contained, even if it had any appreciable effect, which is doubtful, did not in any degree affect the question of the caffeine contained in the compound, which is alone the subject of complaint in the libel, and the amount of which has always been the same, the elimination of the slight trace of cocaine, under the undisputed evidence, having the effect of diminishing the effect of the caffeine, if it had any effect at all. And, second, however this may be, I think the undisputed proof shows the acquisition by this product of the distinctive name coca cola, in its present form, with the same amount of caffeine and without any cocaine whatever, in the several years that have elapsed since the slight trace of cocaine which it originally contained was entirely removed by the new process to which the coca leaves were subjected.

I am therefore of opinion that the motion for a new trial should be overruled.

3. The libelant having, at the request of the court, submitted a brief upon the question of costs, in view of the doubt in the mind of the court as to the propriety of taxation of costs against the libelant under the judgment as originally prepared by counsel, upon examination of the authorities I am satisfied that this decree was erroneous in so far as it taxed the entire cost of the proceeding against the libelant and that the decree should be modified so that no costs shall be taxed against the libelant and all the claimant's own costs adjudged against it. See United States *v.* Boyd, 5 Howard, 29–50; Pine River Logging Co. *v.* United States, 186 U. S. 279, 296; R. S. sec. 979; Supreme Court Rules, No. 24, clause (4).

4. An order will accordingly be entered overruling the motion for a new trial and correcting the former judgment as to costs in the manner indicated in this opinion.

To the action of the court in overruling the said motion the libelant then and there excepted, and, on July 11, 1911, the bill of exceptions of the Government to the judgment of the court, directing a verdict against it and overruling its motion for a new trial,

theretofore tendered, was signed, sealed, and ordered to be made a part of the record and filed.

On November 21, 1911, the Government filed in said district court its petition praying for the allowance of a writ of error on an assignment of errors and praying also that a transcript of the record and proceedings be sent to the United States Circuit Court of Appeals for the Sixth Judicial Circuit, and on November 24, 1911, the writ of error was allowed and the case submitted to said court of appeals on November 10, 1913.

On June 13, 1914, the case having come on for final hearing before the said circuit court of appeals (Warrington, Knappen, and Denison, *C. J.*), the judgment of the district court ordering the dismissal of the libel was affirmed, as will more fully appear from the decision of the court (Denison, *C. J.*):

This proceeding was brought by the United States to condemn a quantity of sirup called Coca Cola. Forfeiture was claimed under the Pure Food Law (34 U. S. S. L. 768), because the sirup was said to be adulterated and misbranded. The case was tried at great length before a jury; at the conclusion of the trial, the Government withdrew certain issues, and upon the two remaining matters, the court instructed a verdict for the Coca Cola Co., the claimant of the property. The sole question presented by this writ of error is whether there was any evidence tending to show that the article was either adulterated or misbranded within the prohibition of the act. The facts presented and the questions involved are so well set out by the district judge in his carefully prepared opinion (191 Fed. Rep., 431)[1] that we refrain from further preliminary statement. The sections and clauses of the act which it seems may have some bearing on the question before us are given in the margin.[2]

In applying a statute to particular facts and where it becomes necessary to construe language to which opposing sides give different meanings, it is vital to have in mind the essential scope and purpose of the act. The present case well illustrates the importance of this consideration. Much of the Government's contention as to the extent of the prohibitions here found rests upon the theory that Congress intended to protect the public health by preventing (to the extent of the constitutional power resting in the commerce clause) the sale or transportation of deleterious foods. The opposing contention denies this broad purpose and concedes only the intent to prevent any fraud or deception in the sale of foods. The title to the act is broad enough to support the Government's utmost claim as to general purpose. It is "An act for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, etc." If there was nothing in the body of the act expressly prohibiting the sale of deleterious food, *qua* deleterious, this title would furnish some reason for expanding in that direction any terms of prohibition there might be, ambiguous enough to permit the implication (Goodlett *v.* L. & N. R. R. 122 U. S. 391, 408); but we find in section 11, which relates solely to importations from foreign countries, an express direction that such importation shall be wholly

[1] The parts of the libel voluntarily dismissed by the Government were those matters numbered 4 and 5 in the district judge's opinion; the statement on page 440 of 191 Fed. Rep. is erroneous in this respect.

[2] SEC. 6. * * * the term "food," as used herein, shall include all articles used for food, drink, confectionery, or condiment, by man or other animals, whether simple, mixed, or compound.

SEC. 7. That for the purposes of this act an article shall be deemed to be adulterated * * * in the case of food * * * Third, if any valuable constituent of the article has been wholly or in part abstracted * * * Fifth, if it contain any added poisonous or other added deleterious ingredient which may render such article injurious to health.

SEC. 8. That the term "misbranded," as used herein, shall apply to all drugs, or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design, or device regarding such article or the ingredients or substances contained therein which shall be false or misleading in any particular * * * that for the purposes of this act an article shall also be deemed to be misbranded * * * in the case of food: First, if it be in imitation of or offered for sale under the distinctive name of another article. Second, if it be labeled or branded so as to deceive or mislead the purchaser * * * or if it fail to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any such substances contained therein. * * * Fourth, if the package containing it or its label shall bear any statement, design, or device regarding the ingredients or the substances contained therein, which statement, design, or device shall be false or misleading in any particular: *Provided*, That an article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded in the following cases: First, in the case of mixtures or compounds which may be now or from time to time hereafter known as articles of food, under their own distinctive names, and not an imitation of or offered for sale under the distinctive name of another article, if the name be accompanied on the same label or brand with a statement of the place where said article has been manufactured or produced. Second, * * * : *And provided further*, That nothing in this act shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredient to disclose their trade formulas, except in so far as the provisions of this act may require to secure freedom from adulteration or misbranding.

forbidden if the food is adulterated or misbranded "or is otherwise dangerous to the health of the people of the United States." We have, therefore, a provision which responds to the call of the title in this particular and makes it unnecessary to resort to any otherwise unjustifiable construction for the mere purpose of giving some effect to all parts of the title. With the exception of this clause of section 11, every other directly or indirectly prohibitory clause of the act relates to articles which carry the taint of deception and fraud by being adulterated or misbranded. Section 2 prohibits interstate commerce in any article "which is adulterated or misbranded within the meaning of this act" and subsequent clauses of the same section refer to "any such article so adulterated or misbranded within the meaning of this act" and to "any such adulterated or misbranded foods." The expert examination provided for by section 4 is to determine "whether such articles are adulterated or misbranded." Section 7 defines when, for the purposes of the act, an article shall be deemed to be adulterated, and section 8 defines the term "misbranded" as used in the act, and specifies when, for the purposes of the act, an article shall be deemed to be misbranded. Section 9 prescribes a certain immunity from prosecution when there is a guaranty to the effect that the article is not adulterated or misbranded within the meaning of the act. Section 10 provides for the seizure and forfeiture of the offending articles, but its effect is limited to an article which is adulterated or misbranded within the meaning of the act. A subsequent clause of section 10 furnishes some superficial support for the broader theory of the purpose of the act by providing for the disposition of the offending article, if it "is condemned as being adulterated or misbranded or of a poisonous or deleterious character within the meaning of this act"; but this support is only superficial, because the power to condemn, given by the first part of section 10, rests on the finding that the article is "adulterated or misbranded." This general reference to a poisonous or deleterious character as ground of condemnation must be to instances where that character, by incorporation into the article, causes the fatal adulteration or misbranding. Considering all these parts of the act, together with its title, we can not doubt that, so far as its general purpose and intent furnish any aid for interpretation, that general purpose and intent must be deemed to be the prevention of fraud and deception, so that the purchaser can get the thing he has a right to suppose he is getting, rather than the protection of the public health to the extent of preventing the purchaser from deliberately and intentionally buying a particular food which is what it purports to be, even though a jury might think it "deleterious." If argument were needed to sustain this conclusion, it could be found in the provisions as to drugs. Foods and drugs are put on the same basis throughout, save as to matters of definition, and some detailed requirements. There can be no room to suppose that the act was intended to prohibit broadly the sale of all deleterious foods and not to prohibit with equal breadth the sale of all poisonous drugs. The latter supposition is impossible; and so the former can not be accepted. Further support will be found in the provisions which, by necessary implication, permit the sale of foods containing cocaine, morphine, and the like, provided the purchaser is properly advised of the contents. These views of the general purpose of the act have been accepted by the decisions, so far as they go. (Savage *v.* Jones, 225 U. S., 501, 533–5; McDermott *v.* Wisconsin, 228 U. S., 115, 131; United States *v.* Lexington Co., 232, U. S. 399, 409.)

The general language of the court in the last cited case that "the statute was intended to protect the public health from possible injury," is not at all inconsistent with the view we have expressed, because that language is used with reference to adulterations and the addition to known foods of injurious elements. The very word "adulterated" imports fraud and deception; it implies that the article is not what it purports to be.

Under the statement of facts, it is clear that the only question arising under section 7 is whether the caffeine in the Coca Cola is an "added poisonous or other added deleterious ingredient which may render such article injurious to health"; and, under the assumption made by the district judge, of which the Government can not complain, and which we here adopt, but only for the purposes of this opinion—i. e., that there was evidence requiring submission to the jury to the effect that caffeine is a poisonous or deleterious ingredient which may render the Coca Cola injurious to health—it is equally clear that the turning point is whether it can be said or whether a jury could be permitted to say that the caffeine was "added" within the meaning of this clause.

It is impossible intelligently to conceive the meaning of "added" unless we suppose a base upon which the addition is placed, and we at once meet the question: If caffeine is the addition, what is the base? For 15 years before the passage of the act, Coca Cola had been an existing article of food (within the statutory definition of "food") and in the latter 10 years of that period it had been one of the most widely known and used articles of its general class. It was a compound; it had no distinctive base (unless water, by reason of its larger proportion); it was made up of water, sugar, caffeine,

phosphoric acid, glycerin, lime juice, coloring matter, flavoring matter, and "merchandise No. 5." Each of these elements is more or less important; there seems to be no method of determining their relative importance; but if any one may be rejected as comparatively negligible or secondary or noncharacteristic, that one is not caffeine. In the manufacturing process water and sugar are boiled to make a sirup; this boiling is repeated; then caffeine is "added" and then the sirup is boiled once or twice more; the sirup is then put into a cooling tank and then into a mixing tank in which the remainder of the process is carried on and in which the other elements become part of the ultimate combination. It is plain as may be that without caffeine, the mixture would not be Coca Cola, and the purchaser who had been using it in its standard form 15 years when the act was passed, and who might then buy an article of the same name which did not contain any caffeine, would rightfully think that he was deceived; and yet it is said that the act intended to prevent misleading the public is violated unless the public is thus misled.

It is another form of the same thought to say that the mere use of the word "adulterate" or "added" implies the existence of a standard; and it is a contradiction in terms to say that the use of an element necessary to constitute the standard is an adulteration of, or addition to, the standard; but to this contradiction, the argument for the Government necessarily leads. So, further, we find that clause 3 of that division of section 7 relating to foods declares adulteration if any valuable constituent has been abstracted. Caffeine is a valuable constituent. If it is omitted the article is adulterated, and if it is included the article is adulterated. We must break clause 3 to keep clause 5.

It is urged that in case of a compound article each element is, in a proper sense, "added," and so, if any element is deleterious, it is an "added deleterious ingredient." This position not only depends in part upon what we have thought an erroneous view of the general purpose of the statute, but it destroys all force in the word "added" and gives clause 5 of that part of section 7 relating to food precisely the same meaning as if it read "if it contain any poisonous or other deleterious ingredient, etc." The deliberate and careful insertion of the word "added" before the word "poisonous" and again before the word "deleterious," while the word is omitted in the preceding almost identical clause relating to confectionery, can not be treated as accidental or meaningless. So to do, would violate the settled rule of construction which requires us to "give full effect to all the words in their ordinary sense" (Bend *v.* Hoyt, 13 Pet. 263), and requires that "signification and effect shall, if possible, be carried to every word" (Market Co. *v.* Hoffman, 101 U. S. 112, 115), and declares it the "duty of the court to give effect, if possible, to every clause and word of a statute, avoiding, if it may be, any construction which implies that the legislature was ignorant of the meaning of the language it employed" (Montclair *v.* Ramsdell, 107 U. S. 147, 152).

Again, it is urged that the true test whether the deleterious ingredient is "added" is whether this ingredient is in its natural or in an artificial form. This criterion is supposed to find support in statements made during the congressional debates and in the well-known fact that many natural articles of food, like fruits, contain elements which in the combination formed by the complete fruit are not materially harmful, but which, when extracted and administered separately, may be injurious. This criterion may often be a useful aid in applying and interpreting the statute, but to apply it as a hard and fast rule where artificially compounded foods are under consideration comes to saying, in the case before us, that if coffee berries or tea leaves, or, we take it, the complete extract of coffee berries or tea leaves, containing the amount of caffeine now in question, were put into the compound in its manufacture, there would be no violation of the law, but that if the caffeine, and that only, which was in these same coffee berries or tea leaves or in some other natural product is put into the sirup, the law is broken. Alcohol surely might be considered a "deleterious ingredient," if caffeine may be; but can we suppose that a compound food would be obnoxious to this law if it contained 5 per cent of alcohol purchased in the market ready distilled, and yet that a compound otherwise the same would be within the approval of the law though it contained 25 per cent of alcohol distilled from grain during the process of making the compound? There has been much controversy whether "blended whisky" could be sold under that name, but it has never been thought to be forbidden merely because its alcohol was an "added" ingredient. Many wines are "fortified" by adding alcohol, and these may be obnoxious to the law for other reasons; but if the theory now under consideration is correct, they could not be sold at all, no matter how labeled. This theory must even lead us to say that if a ground or pulverized coffee or a coffee extract is so deficient in caffeine as to be below standard, the law is violated by adding from another source caffeine enough to make the coffee of full normal strength, or to say that it is a vital distinction whether the citric acid contained in any familiar and popular acid beverage is at the time of compounding squeezed from a lemon or poured

from a bottle. We can not follow the argument which brings us to those results. Not only is it without basis in the statute, but it lacks inherent cogency.

We get from section 8 some help on the proper meaning of the phrase "added poisonous or deleterious ingredient," because, unquestionably, the two sections must be construed together and the same phrase should have the same construction in each. The proviso of the fourth paragraph of that part of section 8 relating to food seems to be drawn with express reference to situations like the present. Congress must have known that many proprietary articles of food and drugs were upon the market under proprietary or trade names, and Congress thought fit to provide that these things should not be deemed to be adulterated unless any deleterious ingredient contained therein was "added." This recognizes somewhat more expressly than is done by section 7 the thought that the necessity of a standard before there can be any adulteration applies as well to compounds as to simple foods, and then avoids future difficulties in application by providing that the compound article, in its distinctive and known form, should be the standard.

We do not overlook the argument that the act makes no distinction between compounds known at its date and those thereafter devised, and so that the construction which prevents an inherent element from being considered as "added" leaves the manufacturer at liberty to use any poison he pleases in making up his compound "food," provided only he gives to it and sells it under a distinctive name. This conclusion must, to some extent, be granted; yet it loses most of its apparent force when we remember the real purpose of the act and observe the express direction of the law that the maker of a proprietary food need not disclose its contents if he states the place of manufacture. It would seem a proper provision that if a proprietary food contains any ingredient fairly subject to be called deleterious, the maker should disclose on the label its presence and its extent, just as is required in numerous specific instances; but we can not make such a law. On the other hand, it is difficult to suppose that Congress intended absolutely to forbid the use in any compound of any element that a jury might later call "deleterious," but it must be one thing or the other. The prohibition is either absolute or nonexistent. The best known habit-forming drugs are selected, and implied permission is given to allow their use in compounding products for sale, provided they are named on the label; but as to the great mass of other food and drug elements which are undoubtedly deleterious if used to excess, there is no provision for naming them on the label. If they are within the definition of "added deleterious ingredient," they may never be used under any conditions or in any quantity that may be injurious to health, even though they are described in the largest of letters on the outside of the package. This way of reading the statute would practically greatly impede the progress of synthetic chemistry in foods, and we think it distinctly more unreasonable than it is to suppose that Congress, having selected and regulated the use of those things known to be particularly dangerous, thought best not wholly to forbid at that time other things from which no serious danger need be anticipated.

There is a middle view which is sufficient for the purposes of this case and which will recognize the composite meaning of "added deleterious" rather than the separate meaning of each word. This view is that in using the word "added" with reference to a possibly deleterious food ingredient, Congress had in mind an addition above and beyond the quantity in which such ingredient was normally found in usual and customary articles of food, and that no such ingredient should be considered as "added" if it was present only in the quantity in which it existed in these common articles of food with which every member of Congress was familiar, and which had generally been thought wholesome. For example, creosote and other products of destructive wood distillation are, independently considered, injurious, but they have always been present in smoked hams. Can the addition of the same preservatives to the same extent to the same meat be something that Congress intended to prohibit? The boric acid found in apples is a preservative. If certain apples which are to be preserved are not up to the maximum in this element, did Congress intend to forbid supplying the deficiency by the same element from another source? Acetic acid may, of course, be injurious, but if, by its use, an artificial vinegar is made which is chemically and in every way equivalent to the natural vinegar familiar to the members of Congress in many compounds, would they have thought of it as a deleterious addition?

No example is so clear as the very one here involved. Every member of Congress had been familiar, from childhood, with tea and coffee; perhaps most of them drank it. The average cup of coffee contains more than 2 grains of caffeine; the average cup of tea, 1½ grains. A glass of Coca Cola, as consumed, contains 1½ grains of caffeine. The chemical qualities and the physiological effects of the caffeine which is in the tea or coffee and of the caffeine which is in the Coca Cola are precisely the same. We are quite convinced that the use in an artificial beverage of a certain element which had

been one of its characteristic elements for many years, and when such use was in a less proportion than the same element was known to make up in different natural beverages then in universal use and generally thought wholesome—that such an element so employed could not have been within the meaning of Congress when it chose the words "added deleterious ingredient."

The question arising under section 8—the misbranding section—is to be determined by the proviso under the fourth clause relating to food. Separate reference to the first clause which forbids sale "under the distinctive name of another article" is unnecessary, because the same prohibition is repeated in the proviso under clause four. We have reached the conclusion that Coca Cola does not contain any "added poisonous or deleterious ingredients," and it is undisputed that the labels carry a statement of the place of manufacture. Hence, this proviso declares that Coca Cola shall not be deemed to be adulterated or misbranded if it was or is known as an article of food under its own distinctive name and if it is not in imitation of or offered for sale under the distinctive name of another article. It is an article of food, under the definition of the statute. That it was, at the time of the passage of the law and ever since has been, known under its own distinctive name is too clear for question, except as it is said that the adopted name can not be its distinctive name because it is the distinctive name of another article. Neither is it said to be an imitation of another article, except as these words also raise the same question whether it is sold under the distinctive name of another article. Coming to that question, and just as on the subject of adulteration we must first find the standard, we here first meet the inquiry, What is the "distinctive name of another article" under which name Coca Cola is sold? The record makes it very clear to us that there is no such other article. No article, except plaintiff's compound is or ever has been sold "under the distinctive name" Coca Cola. These words constitute and are the distinctive name of plaintiff's product, and they are the distinctive name of nothing else. "Coca" is indicative of one article; "cola" is indicative of another, very distinct, but "Coca Cola" was not, in 1892, and (save for the general knowledge of plaintiff's article) is not now intelligently descriptive of any combination of the two. It might be medicine, food, or drink; it might be to swallow, smoke or chew. These associated words as the distinctive name of any substance or combination of substances were unknown until adopted by plaintiff; that "distinctive name" is still unknown as an appellation for any other substance on the market.

The burden put upon the Government to show that Coca Cola is masquerading under the distinctive name of another article is surely more exacting than the burden on one attacking the trade-mark to show that the name is sufficiently misleading as indicating the makeup of the product so that it is an improper trade-mark. We consider the latter question in our opinion this day filed in Nashville Sirup Co. *v.* Coca Cola Co., and conclude that the name carried no forbidden deception. We need not here repeat that discussion. If that conclusion is correct, it is even more certain that Coca Cola is not guilty of posing "under the distinctive name of another article."

It follows that the judgment below must be affirmed.

On July 15, 1915, a petition for a writ of error and the writ of error to the Supreme Court of the United States were filed, and the case is now pending on said writ of error in the Supreme Court of the United States.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *November 4, 1915.*

4033. Misbranding of "Palatable Cod Liver Oil Comp." U. S. v. American Druggists Syndicate. Plea of guilty. Fine, $5. (F. & D. No. 2232. I. S. No. 19597-b.)

On September 13, 1912, the United States attorney for the Eastern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the American Druggists Syndicate, a corporation, Long Island City, N. Y., alleging shipment by said company, in violation of the Food and Drugs Act, on February 8, 1910, from the State of New York into the District of Columbia, of a quantity of "Palatable Cod Liver Oil Comp.," which was misbranded. The product was labeled: (On front of package) "Premium Preparation of the Active Principles of Pure Norwegian Cod Liver Oil with Malt, Wild Cherry and Hypophosphites. Strength Building A. D. S. Palatable Cod Liver Oil Comp. Contains 17% Alcohol. Indicated in all Wasting Diseases Particularly those Associated with Lung Affections. A Sovereign Remedy in Pulmonary Tuberculosis or Consumption of the Lungs Price One Dollar American Druggists Syndicate New York" (On side of package) "The Great Curative Value of this Preparation has been demonstrated by the Most Eminent Physicians, who regard it as a powerful strength builder, that gives the system force to resist the Invasion of Bacilli." (On side of package) "This Preparation will not upset the stomach or derange Digestion, it may be taken freely by those who cannot retain Cod Liver Oil. Compounded and Warranted by an Association of Ten [Five] Thousand Qualified Druggists. No. 1214. Guaranteed by the American Druggists Syndicate under the Food and Drugs Act, June 30, 1906." (On back of package) "A. D. S. Cod Liver Oil Comp. Guaranteed by an Association of 10,000 [5,000] Qualified Druggists. This is one of the list of 500 Family Remedies and Toilet Preparations manufactured by the American Druggists Syndicate, an association composed of 10,000 [5,000] leading Retail Druggists of America. Every formula of these preparations is selected by a national committee, composed of one qualified druggist from each State and Territory. Wonderful Progress Made Medical science has made wonderful strides in the cure of all human ailments during the past decade, and the intelligent druggist naturally has the best opportunity of keeping abreast of the progress, and is familiar with those remedies which yield the best practical results. The benefit of a 'consultation' of ten [five] thousand progressive druggists in America is offered you in these remedies. If you don't know what ails you, see a physician; but if you know what is the matter, take advantage of this opportunity to secure the benefit of the experience of ten [five] thousand druggists, who offer you a selected remedy for your ailment. In taking a remedy for the relief and cure of disease, the most important thing is faithfulness in following directions. Persist until you get the effect desired, then continue further until the results are established. This is one of the secrets of getting well."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

Reaction to litmus: Acid.	
Nonvolatile matter (per cent)	41.01
Ash (contains Fe, Ca, K, Na, Mn, P_2O_5) (per cent)	0.25
Alcohol (per cent by volume)	13.60
Ether extract from alkaline solution (per cent)	0.03
Ether extract from acid solution (per cent)	0.05
Sucrose (per cent)	0.68
Reducing sugar, as invert (per cent)	33.58
Nitrogen (per cent)	0.044
Alkaloids (unidentified) (per cent)	0.005
Glycerin: Present.	
Caramel: Present.	
Iodin, bile salts, cholesterol proteid, and volatile alkaloids: None.	
Indication of malt extract.	

Misbranding of the article was alleged in the information for the reason that the label on the package, box, and carton bore statements, designs, and devices regarding said article, and the ingredients and substances contained therein which were false and misleading, in that the statements "Palatable Cod Liver Oil Comp." and "Preparation of the Active Principles of Pure Norwegian Cod Liver Oil" represented that said article and drug consisted, wholly or in part, of cod liver oil or a compound of cod liver oil, and contained the active principle[s] of cod liver oil, whereas, in truth and in fact, the said product did not contain cod liver oil in any appreciable or measurable quantity, and did not possess the active principle[s] of cod liver oil. Misbranding was alleged for the further reason that the label on the package, box, and carton bore statements, designs, and devices regarding said article, and the ingredients and substances contained therein which were false and misleading, in that the statements "A Sovereign Remedy in Pulmonary Tuberculosis or Consumption of the Lungs", and "The Great Curative Value of this Preparation has been demonstrated by the Most Eminent Physicians, who regard it as a powerful strength builder, that gives the system force to resist the Invasion of Bacilli" represented that said article and drug was a sovereign remedy in pulmonary tuberculosis or consumption of the lungs, and a powerful strength builder, giving the system force to resist the invasion of bacilli, whereas, in truth and in fact, the said article and drug was not a sovereign remedy in pulmonary tuberculosis or consumption of the lungs, was not a powerful strength builder, and possessed no properties such as would give the system force to resist the invasion of bacilli.

On June 30, 1915, the defendant company withdrew its plea of not guilty theretofore entered and entered a plea of guilty to the information, and on July 8, 1915, the court imposed a fine of $5.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *November 4, 1915.*

4034 (Supplement to Notice of Judgment 3275). Misbranding and alleged adulteration of macaroons. U. S. v. F. B. Washburn & Co. Decision of the Circuit Court of Appeals for the First Circuit affirming the judgment of conviction of the lower court upon a charge of misbranding macaroons and reversing the judgment of conviction upon the charge of adulteration of macaroons. (F. & D. No. 2247. I. S. No. 1928-c.)

On March 19, 1915, F. B. Washburn & Co., defendant corporation, which had been convicted on January 10, 1913, in the District Court of the United States for the District of Massachusetts in a case involving the interstate shipment of a quantity of misbranded macaroons, which were also alleged to have been adulterated, was ordered by the court to pay a fine of $100 upon the verdict of guilty returned by the trial jury. On the same date (March 19, 1915) the defendant's bill of exceptions, theretofore filed, was allowed by the court; the petition for writ of error was also filed and allowed by the court, as was the assignment of errors. It was also ordered that the said writ of error operate as a stay of proceedings under the sentence of the lower court and that the execution thereof be superseded pending said writ of error.

On July 16, 1915, the case having come on for hearing in the Circuit Court of Appeals for the First Circuit before Putman, Bingham, and Aldrich, *JJ.*, the judgment of conviction in the lower court in so far as relates to the charge of misbranding of the macaroons was affirmed, and the judgment of conviction in the lower court upon the charge of adulteration was reversed, as will more fully appear from the following decision by the said circuit court of appeals (Bingham, *J.*):

This is an information brought by the United States under sections 2, 7, and 8 of the Food and Drugs Act of January 30, 1906 (34 Stat. at Large, p. 768, c. 3915). It contains two counts. In the first count the Government charges that, on August 1, 1910, the respondent, at Brockton, in the district of Massachusetts, unlawfully and knowingly shipped and delivered to a carrier for shipment and carriage from said Brockton to Greensburg, in the State of Pennsylvania, certain food called "macaroons," which food was adulterated within the meaning of the act of Congress approved June 30, 1906, "in that a substance, to wit, glucose, had been mixed and packed with said food so as to reduce and lower and injuriously affect its quality or strength." In the second count it was charged that the food shipped as aforesaid was misbranded within the meaning of the act, "in that the label on said food and its containers, and the package containing the same, did bear a certain statement regarding said food which was false and misleading in certain particulars; that is to say, the statement, in substance and effect, following: 'Macaroons,' whereas in truth and in fact said food was not macaroons."

There was a trial by jury, and a verdict of guilty was rendered on each count. The case is now here on the respondent's bill of exceptions, and the errors assigned are to the refusal of the court to direct verdicts for the respondent at the close of all the evidence, to its refusal to give certain requested instructions, and to the admission of certain evidence.

The provisions of the statute relied upon to sustain the first count read as follows:

"SEC. 7. That for the purposes of this act an article shall be deemed to be adulterated: * * *

"In the case of food:

"First, if any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength."

It was stipulated between the parties, and the stipulation was put in evidence, that the food in question was shipped by the respondent in interstate commerce, as set forth in the information, that it contained 29.44 per cent of commercial glucose and that the package containing the food was labeled as the information alleged. There was also evidence that the food contained 42.76 per cent of cane sugar.

At the trial the principal question in dispute was as to what the article of food known as a "macaroon" consisted. There was evidence tending to show that it consisted (1) of ground almonds, sugar, and the white of eggs; (2) of coconut, sugar, and the white of eggs; and (3) of coconut, sugar, the white of eggs, and glucose. On the count for adulteration one of the Government's positions was that a macaroon was an almond cake, but whether it was a cake of almond or coconut it was adulterated if glucose was added. The respondent's position was that a macaroon was a cake made of coconut, sugar, the white of eggs, and glucose, and it requested the court to charge the jury, in substance, that if they found a cake so made was a macaroon they should acquit the defendant of the charge of adulteration. The court refused to give this instruction, and charged the jury that the question for them to consider on this count

was whether the cakes which the respondent admitted having shipped in interstate commerce were adulterated, in that glucose had been mixed and packed with them so as to reduce or lower or injuriously affect their quality or strength, and that in considering that question they need not determine whether the cakes shipped by the defendant were properly called "macaroons" or not, but should consider that they were macaroons notwithstanding they had coconut in them. It thus appears that the court in its charge did not permit the jury to determine, on the first count, of what the article of food known as a macaroon consisted, but charged them, as a matter of law, that it consisted of coconut, sugar, and the white of eggs, and that they might find the product adulterated if the glucose, which the respondent admitted it put into its cakes, reduced or lowered or injuriously affected their quality or strength. The respondent, in view of the evidence, was entitled to have the jury, before reaching a conclusion upon the question of adulteration, determine what a macaroon was. Indeed, it was essential, in view of the theory on which this branch of the case was tried, for them to do so in order to reach a correct result. If the jury found that it consisted of ground almonds, sugar, and the white of eggs, the respondent was entitled to be discharged, for there was no evidence that it shipped in interstate commerce macaroons made of almonds to which glucose was added. Then, again, if the jury found that a macaroon consisted of coconut, sugar, the white of eggs, and glucose, the respondent was entitled to be discharged, for the evidence disclosed that the article which it shipped in interstate commerce was so composed. There was only one contingency presented by the evidence and the allegations of this count on which the respondent could be found guilty, and that was in case the jury found that a macaroon consisted of coconut, sugar, and the white of eggs, and that the respondent, by adding glucose, thereby reduced or lowered or injuriously affected its quality or strength. This requested instruction should have been given, and the refusal to do so was error.

As to whether the food product of the respondent was adulterated by the addition of glucose—it being assumed that the article known as a "macaroon" was made of ground coconut, etc., without glucose—the evidence tended to show that commercial glucose or corn sirup was a corn product chemically produced; that it was a white, sweet sirup and in no way injurious to health; was about three-fifths as sweet as cane sugar, and contained greater food properties than cane sugar; that it was a viscid or sticky substance, and gave to the macaroon and caused it to retain a chewy quality; that a macaroon containing glucose was less pleasing to the taste, but whether this was due to a difference in the degree of sweetness between it and cane sugar, or because of the character of the taste, the evidence did not disclose. The only evidence on this point was that some of the witnesses said that they did not like a macaroon made with glucose as well as they did one made with cane sugar.

The respondent requested the court to charge the jury that the law fixed no standard for sweetness in a macaroon, and also that they were not to consider, in determining the innocence or guilt of the respondent on the question of adulteration, the sweetness of corn sirup as compared with the sweetness of cane sugar. It is true that the law fixes no standard for sweetness of a macaroon; it is also true that the evidence disclosed that the degree of sweetness in a macaroon, whether made of coconut or almond, varies with different makers; that they use a greater or less amount of sweetening as their fancy dictates. The court declined to charge the jury, as requested, in these respects, and simply told them that there was no dispute as to glucose not being as sweet as sugar; that it was only three-fifths as sweet as sugar, and that, while the defendant's evidence was that this loss in sweetness was compensated for by other advantages in the use of glucose so that, on the whole, the cakes were not reduced or lowered or injuriously affected in quality or strength by its addition, that was for the jury to determine. From this it appears that the court told the jury they might find that a macaroon made of coconut in which glucose was used was adulterated, because glucose was less sweet than cane sugar, unless they found that other advantages derived from the use of glucose so made up for the loss of sweetness as, on the whole, not to reduce or lower or injuriously affect its quality or strength. As the law fixed no standard of sweetness for macaroons, the respondent was entitled to have the jury so instructed, and, as the evidence was such as not to warrant the jury in finding that there was, in fact, any standard of sweetness for a macaroon, they could not consider the question of the degree of sweetness in arriving at a verdict on the question of adulteration; and, if the evidence would warrant no other conclusion than that of a difference in the degree of sweetness, then a verdict should have been directed for the respondent on this count. If, however, in view of the fact that the jury were permitted, in the course of the trial, to eat macaroons made according to the formula of the respondent, and macaroons made with sugar without glucose, it can be said that they had evidence before them as to the character of the taste of macaroons produced with sugar as compared with those made of sugar and glucose,

and that, because of this difference, macaroons made with sugar and glucose were less palatable than those made with cane sugar alone, then there may have been some evidence on which to submit the question to the jury. But this view of the evidence was not presented to the jury by the charge, and the verdict was based apparently upon the evidence showing a difference in the degree of sweetness. For these reasons we are of the opinion that the verdict on this count must be set aside.

Furthermore, it seems to us that the trial on the first count proceeded upon a wrong theory, and that the allegations and proofs offered would not warrant a conviction for adulteration within the meaning of the act. The evidence discloses that a macaroon is a mixed food composed of certain ingredients; that the name by which it is known is distinctive; and that the added ingredient (glucose) which the respondent used in its cakes was not poisonous or deleterious to health. It is provided in section 8, subdivision 4 (1), that a mixture known by a distinctive name shall not be regarded as adulterated if it does not contain any added poisonous or deleterious ingredient. The added ingredient here in question was neither poisonous nor deleterious, and, as the mixture or compound was known by a distinctive name, it was not adulterated within the meaning of the act. United States *v.* Forty Barrels of Coca Cola, 215 Fed. Rep., 535; id., 191 Fed. Rep., 431.

Upon the second count the contention of the Government was (1) that a macaroon as commonly understood, was made of ground almonds, sugar, and the white of eggs, and if an article made of ground coconut was labeled and shipped as a "macaroon" it was misbranded; and (2) that whether, on the evidence, a macaroon should be found to consist of ground almonds or coconut, sugar, and the white of eggs, as those branded and shipped by the respondent, also contained glucose, they were not macaroons and were misbranded.

As there was evidence on this count from which the jury could have found that a macaroon, as commonly understood, was made of ground almonds, sugar, and the white of eggs, and that those shipped by the respondent contained coconut, but were branded "Macaroons," the Government was entitled to go to the jury on this count as to this matter.

There was also evidence on this count, from which the jury could have found that a macaroon, as commonly understood, was made of ground coconut, sugar, and the white of eggs, and that those shipped by the respondent in interstate commerce were thus made up, except that glucose was added; and the question is suggested whether the jury would be warranted in finding that, by the addition of glucose, the articles ceased to be macaroons, so that the respondent misbranded them by labeling them "Macaroons." In the first count the court charged the jury that a cake made of coconut, sugar, and the white of eggs was a macaroon for the purpose of adulteration, and that if they found those shipped by the respondent in interstate commerce contained glucose they might find that they were adulterated if their quality or strength was thereby lowered. The respondent urges that this produces this dilemma: That a cake made of coconut, sugar, and the white of eggs is a macaroon which may be adulterated by the addition of glucose, and also that it may be found not to be a macaroon, for the purpose of misbranding, if glucose is added. But, in view of the conclusions reached with reference to the first count, we find it unnecessary to consider this contention. If the jury found that a macaroon consisted of coconut, sugar, and the white of eggs, then, inasmuch as those shipped by the respondent contained glucose and were branded "Macaroons," they were misbranded within the meaning of section 8, subdivisions 1 and 4 (1), for they were "an imitation of or offered for sale under the distinctive name of another article" and were labeled so as to deceive and mislead the purchaser. United States *v.* Forty Barrels of Coca Cola, supra.

We do not find it necessary to consider the question of evidence to which exception was taken, as it relates solely to the first count.

The decree, so far as it relates to the count for misbranding, is affirmed, but so far as it concerns the count for adulteration it is reversed, the verdict is set aside, and the case is remanded to the district court for further proceedings not inconsistent with this opinion.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *November 4, 1915.*

4035 (Supplement to Notices of Judgment 1642 and 3871). Adulteration of candy eggs and pears and alleged adulteration of candy peaches. U. S. v. 131 Boxes of Candy Eggs, U. S. v. 96 Boxes of Candy Peaches and Pears, and U. S. v. 80 Boxes of Candy Eggs. Consent decrees of condemnation and forfeiture as to the candy eggs and pears. Product ordered released on bond. Order releasing the candy peaches without condemnation. (F. & D. Nos. 2506, 2522. S. Nos. 889, 894.)

On June 22, 1915, the mandate of the Circuit Court of Appeals for the First Circuit was filed in the District Court of the United States for the District of Massachusetts, directing that the judgment of the district court be reversed in the case arising out of the case of the United States *v.* 131 Boxes of Candy Eggs, and that the verdict of the jury, declaring that the product was not adulterated, be set aside.

Thereupon, in conformity with the mandate above referred to, the action prescribed therein was taken, and on June 23, 1915, said case and the case of United States *v.* 96 Boxes of Candy Peaches and Pears and the case of the United States *v.* 80 Boxes of Candy Eggs having come on to be heard on the amended information upon which the cases were heard in the trial court and on the answers of the claimants, R. C. Boeckel & Co., York, Pa.; Henry Heide, New York, N. Y.; S. Fisher & Co., Hoboken, N. J.; and the National Candy Co., Buffalo, N. Y.; and the verdict of the jury having been set aside, and the bills of exceptions by the claimants having been dismissed by agreement with respect to the case of the United States *v.* 96 Boxes of Candy Peaches and Pears and the case of the United States *v.* 80 Boxes of Candy Eggs, the parties having agreed that the candy peaches did not contain talc and might be returned to S. Fisher & Co., the claimant thereof, and said claimants having filed a satisfactory bond in the sum of $500 in all the cases, in conformity with section 10 of the act, judgments of condemnation and forfeiture were entered with respect to the candy eggs and candy pears, and it was ordered by the court that said candy eggs and pears should be delivered by the United States marshal to the claimants thereof upon payment of all the costs of the proceedings.

In conformity with the agreement above referred to, the candy peaches were ordered released to the claimants thereof, S. Fisher & Co., without the execution of bond.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *November 4, 1915.*

4036 (Supplement to Notice of Judgment 3400). Adulteration of preserves. U. S. v. Glaser, Kohn & Co. Decision by the Circuit Court of Appeals for the Seventh Circuit affirming the judgment of conviction of the District Court of the United States for the Northern District of Illinois. (F. & D. No. 2688. I. S. No. 3433-c.)

On February 24, 1914, Glaser, Kohn & Co., a corporation, Chicago, Ill., the defendant company, entered its motion for a new trial in a case in the District Court of the United States for the Northern District of Illinois involving the shipment in interstate commerce, on October 14, 1910, from the State of Illinois into the State of Wyoming, of a quantity of a product labeled "Herald Brand Fruit Preserves Blackberry Flavor Apple Preserves 74%, Blackberry Preserves 26%," which had been sold by the defendant company under a written guaranty to the shipper thereof that the same was not adulterated or misbranded within the meaning of the Food and Drugs Act.

Theretofore a jury in said court had found the defendant company guilty upon one of the counts of the information, which charged adulteration of the article for the reason that it consisted in part of a decomposed vegetable substance. On February 25, 1914, after having heard the arguments of counsel, the court denied said motion, to which ruling the defendant company duly excepted and entered a motion in arrest of judgment, which was also overruled and denied, and thereafter, on April 28, 1914, the court imposed on the defendant company a fine of $200 and costs.

On May 7, 1914, the defendant company filed its bill of exceptions, and on July 6, 1914, its petition for a writ of error and its assignment of errors, praying that the judgment of the district court aforesaid by reason of errors in the record and proceedings be reversed, and on the same date the writ of error was allowed.

On July 30, 1914, a transcript of the record and proceedings was transmitted to the United States Circuit Court of Appeals for the Seventh Circuit, and on May 20, 1915, the case came on for final disposition before said circuit court of appeals (Baker, Kohlsatt, and Mack, *C. J.*), the statement of the facts in the case by said court being as follows:

On or about January 15, 1907, plaintiff in error executed and delivered to Steele-Wedeles Company, of Chicago, Illinois, a guaranty in writing signed by it, which guaranty reads:

STEELE-WEDELES CO., City.

GENTLEMEN:

Replying to your favor 10th inst., would say we hereby guarantee that all goods as furnished you hereafter will comply with the Food and Drugs Act of June 30, 1906, with the understanding, however, that if we at any time use labels or packages furnished by you or gotten up as per your instructions, we shall not be responsible for the form or wording of the same but only guarantee that goods covered by same are not adulterated. It is expressly understood that the above shall hold good until notice of revocation be given in writing.

Truly yours,

GLASER, KOHN & CO.,
G. D. GLASER, *Pres.*

Afterwards and on or about September 15, 1910, and while said guaranty, by its terms, was in full force, plaintiff in error sold and delivered to said Steele-Wedeles Company two dozen jars of preserves, described as "Herald Brand Fruit Preserves Blackberry Flavor Apple Preserves 74% Blackberry Preserves 26%," which jars of preserves Steele-Wedeles Company shipped in interstate commerce from Chicago to Rock Springs, in the State of Wyoming, on or about October 14, 1910. On or about October 20, 1910, an inspector of the United States bureau of chemistry purchased a sample of these preserves and sent the same, properly sealed, to the bureau of chemistry of the Department of Agriculture, where it was duly examined by experts on or about December 8, 1910, who pronounced the sample analyzed to contain mold and to be partly decomposed and made from partly decomposed fruit. Thereafter the United States filed its information, containing six counts, against plaintiff in error, of which only the fourth count is here involved, which charges plaintiff in error with unlawfully knowingly selling and delivering to Steele-Wedeles Company the said jars of preserves, contrary to the provisions of the so-called pure food law of the United States approved June 30, 1906, entitled "An act for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes," in that said jars of preserves, when and where they were so sold and delivered, were an adulterated article of food within the meaning of the act and consisted in part of decomposed vegetable

substance, and further charging that Steele-Wedeles Company shipped said jars contrary to law, by way of a common carrier in interstate commerce to Rock Springs, Wyoming, as aforesaid, basing said information upon said guaranty as having been given and received under the terms of section 9 of said act of June 30, 1906.

On the trial the formal facts were stipulated into the record and evidence of the condition of the preserves when delivered to Steele-Wedeles Company was introduced. This evidence consisted of the opinions of experts, based on the conditions found at the time of the Washington analysis, that the fruit was partly decomposed not only at that time but also at the time of the sale and delivery by defendants to Steele-Wedeles Company. Plaintiff in error offered no evidence, but saved exceptions to the introduction of the said letter of guaranty and to the sufficiency of the expert testimony. At the close of the evidence plaintiff in error moved the court to direct the jury to find plaintiff in error not guilty, which motion the court denied, and an exception was taken. Exception was also taken to that part of the court's instruction which charged the jury that the said guaranty was a legal guaranty. The jury found plaintiff in error guilty, and the court assessed a fine of $200 and costs, to reverse which sentence this writ of error was sued out.

The errors relied on are: (1) the court held that the alleged guaranty was legal and sufficient to hold plaintiff in error under said section nine; (2) the evidence was insufficient to show that the preserves were adulterated at the time they were delivered to Steele-Wedeles Company.

On the said May 20, 1915, the circuit court of appeals affirmed the judgment of conviction rendered in the District Court of the United States for the Northern District of Illinois, as will more fully appear from the following opinion which was delivered by Kohlsaat (*C. J.*):

Section 9 of the act approved June 30, 1906, reads as follows, viz:

SEC. 9. That no dealer shall be prosecuted under the provisions of this act when he can establish a guaranty signed by the wholesaler, jobber, manufacturer, or other party residing in the United States, from whom he purchases such articles, to the effect that the same is not adulterated or misbranded within the meaning of this act, designating it. Said guaranty, to afford protection, shall contain the name and address of the party or parties making the sale of such articles to such dealer, and in such case said party or parties shall be amenable to the prosecutions, fines, and other penalties which would attach, in due course, to the dealer under the provisions of this act.

It will be seen that this section does not, in terms, seem to comprehend a general continuing guaranty, but seems to apply to the specified articles contemplated at the time. Such, indeed, is plaintiff in error's contention. That construction, however, is narrow and not in accord with the spirit of the act, which should be construed in the light of its purpose, as said by the Supreme Court in McDermott *v.* Wisconsin, 228 U. S. 115–128, "and of the power exerted in its passage." This purpose the court, in United States *v.* Antikamnia Co., 231 U. S., 654–665, declares "is to secure the purity of food and drugs and to inform purchasers of what they are buying. Its provisions are directed to that purpose and must be construed to effect it.". As between a dealer to whom the purity of the goods is guaranteed and the manufacturer who has the better opportunity of ascertaining the facts, the act aims to throw the ultimate responsibility on the latter and it should, therefore, be interpreted, if reasonably possible, so as to carry out this purpose to the fullest extent. In our judgment it is, therefore, not only a fair but the most reasonable construction of the act to include within the scope of section 9, continuing guaranties as well as those given at the time of the sale and in reference to specific goods. The belated position of plaintiff in error as to the meaning of the statute with regard to a continuing guaranty comes to us undermined with its earlier construction contained in the letter wherein it says "we hereby guarantee that all goods as furnished you hereafter will comply," etc., and "It is expressly understood that the above shall hold good until notice of revocation be given in writing." There is no reason in law for the claim that a continuing guaranty is invalid.

When by the terms of a written guaranty it appears that the parties look to a future course of dealing for an indefinite time, or a succession of credits to be given, it is to be deemed a continuing guaranty. (Am. & Eng. Ency. of Law, 2d Ed., vol. 14, p. 1139.) Letters of guaranty should receive a liberal, fair and reasonable interpretation, so as to attain the object for which the instrument is designed and the purpose to which it is applied. (Lawrence *v.* McCalmont, 2 How., 425–449.)

We are clearly of the opinion that the letter of January 15, 1907, constituted a good, valid, and sufficient guaranty under the provisions of said section nine, and that said guaranty attached to every item of sale made by plaintiff in error to defendant in error, after the sale thereof until revoked in accordance with the terms thereof, and that it furnished a basis for the filing of the information against plaintiff in error herein.

With regard to the sufficiency of the proof to sustain the verdict of the jury to the effect that the preserves in question were adulterated at the time they were delivered to defendant in error, and not prepared in accordance with said act of June 30, 1906, we find no such situation as would warrant us in substituting our opinion for that of the jury. While expert opinion evidence should be received with caution, it is solely within the province of the jury to determine its weight. They saw and heard the witnesses. In cases such as this, much of the evidence must necessarily be opinion evidence. In the present case there is nothing in the evidence inherently impossible or even improbable. The error is not well assigned.

With regard to the objection that the transaction does not, so far as plaintiff in error is concerned, come within interstate commerce, plaintiff in error does not in its brief include it among the errors relied on. We are, however, satisfied that the point is not well taken. Steele-Wedeles Company was a wholesale grocer, engaged in interstate commerce, as plaintiff in error well knew. By selling and delivering the preserves to that corporation upon the terms of the guaranty, it deliberately placed them in interstate commerce channels.

The judgment of the district court is affirmed.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *November 4, 1915.*

4037. Adulteration of desiccated [evaporated] eggs. U. S. v. Armour & Co. Plea of guilty. Fine, $200 and costs. (F. & D. No. 2690. I. S. No. 1778-c.)

On January 26, 1912, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Armour & Co., a corporation, Chicago, Ill., alleging shipment by said company, in violation of the Food and Drugs Act, on May 7, 1910, from the State of Illinois into the State of Washington, of a quantity of desiccated [evaporated] eggs which were adulterated.

Bacteriological examination of a sample of the product by the Bureau of Chemistry of this department showed after 3 days' incubation 610,000,000 organisms per gram developing on plain agar at 25° C.; 540,000,000 at 37° C.; 100,000 *B. coli* type organisms. The appearance of the product was fair, odor bad, and some dirt was present.

Adulteration of the product was alleged in the information for the reason that it consisted in part, the exact proportion whereof was to the United States attorney unknown, of a filthy animal substance, the exact character whereof was to said United States attorney unknown; for the further reason that the article consisted in part, the exact proportion whereof was to the United States attorney unknown, of a decomposed animal substance, the exact character whereof was to the United States attorney unknown; and for the further reason that the article consisted in part, the exact proportion whereof was to the United States attorney unknown, of a putrid animal substance, the exact character whereof was to the United States attorney unknown.

On October 28, 1914, the defendant company withdrew its plea of not guilty theretofore entered, and entered a plea of guilty to the information, and the cause was taken under advisement by the court. On March 26, 1915, the court imposed a fine of $200 and costs on the plea of guilty entered as above stated.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *November 4, 1915.*

4038. Adulteration of desiccated eggs. U. S. v. A. H. Barber & Co. Plea of guilty. Fine, $200 and costs. (F. & D. No. 2770. I. S. No. 13938-c.)

On August 4, 1913, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against A. H. Barber & Co., a corporation, Chicago, Ill., alleging shipment by said company, in violation of the Food and Drugs Act, on February 3, 1911, from the State of Illinois into the State of Pennsylvania, of a quantity of desiccated eggs which were adulterated.

An examination of a sample of the product by the Bureau of Chemistry of this department showed after 3 days' incubation that it contained 900,000,000 organisms per gram on plain agar at 25° C.; 850,000,000 organisms at 37° C.; 100,000,000 gas-producing organisms, and 100,000,000 streptococci. The appearance of the product was poor and its odor was strong.

Adulteration of the product was alleged in the information for the reason that it consisted wholly of a filthy animal substance, which said filthy animal substance rendered the desiccated eggs unfit for food; further, in that the article consisted in part of a filthy animal substance, which said filthy animal substance rendered the desiccated eggs unfit for food; further, for the reason that the article consisted wholly of a decomposed animal substance, which said decomposed animal substance rendered the desiccated eggs unfit for food; further, for the reason that the article consisted in part of a decomposed animal substance, which said decomposed animal substance rendered the desiccated eggs unfit for food; further, for the reason that the article consisted wholly of a putrid animal substance, which said putrid animal substance rendered the desiccated eggs unfit for food; and further, for the reason that the article consisted in part of a putrid animal substance, which said putrid animal substance rendered the desiccated eggs unfit for food.

On November 16, 1914, the defendant company withdrew its plea of not guilty theretofore made and entered a plea of guilty to the information, and the court took the case under advisement, after evidence had been heard. On March 26, 1915, the court imposed a fine of $200 and costs upon the plea of guilty that had been entered.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *November 4, 1915.*

4039. Adulteration of confectionery. U. S. * * * v. National Candy Co., a corporation. Plea of guilty. Fine, $10 and costs. (F. & D. No. 2789. I. S. No. 12944-c.)

On January 26, 1912, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the National Candy Co., a corporation, having a place of business at St. Louis, Mo., alleging shipment by said company, in violation of the Food and Drugs Act, on or about March 13, 1911, from the State of Missouri into the State of Louisiana, of a quantity of confectionery which was adulterated. The product was labeled: "Turkey eggs." "Guaranteed by Peckham Factory, National Candy Co. under the Food and Drugs Act, June 30, 1906. Serial No. 3623."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed that said product contained talc.

It was alleged in the information that the confectionery when it was shipped as aforesaid contained and was coated with talc, and that section 7 of the Food and Drugs Act, in the first paragraph, in the case of confectionery, provides that any article shall be deemed to be adulterated if it contains talc.

On May 10, 1915, the defendant company withdrew its plea of not guilty previously entered and entered a plea of guilty to the information, and the court imposed a fine of $10 and costs.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *November 4, 1915.*

4040. Adulteration of candy (marshmallow eggs). U. S. v. O. T. Stacy Co. Plea of nolo contendere. Fine, $25. (F. & D. No. 2893. I. S. No. 11763-c.)

On January 27, 1912, the United States attorney for the Western District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against O. T. Stacy Co., a corporation, Rochester, N. Y., alleging shipment by said company, in violation of the Food and Drugs Act, on or about February 28, 1911, from the State of New York into the State of Massachusetts, of a quantity of candy (marshmallow eggs) which was adulterated. The product was labeled: "72—Marshmallow Eggs Guaranteed by O. T. Stacy Co. Serial No. 3996. Guaranteed under Food and Drugs Act, June 30, 1906. Star Brand."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

Ash in insoluble residue obtained by superficially washing candy (per cent)	50.35
Ash insoluble in HCl (per cent)	43.12
Silica (per cent)	13.75
Alumina: None.	
Magnesia (per cent)	10.30
Talc: Present.	

The percentages of silica and magnesia reported above were calculated to the insoluble residue obtained by superficially washing the candy. The silica was purified by hydrofluoric acid.

Adulteration of the article was alleged in the information for the reason that said candy and marshmallow eggs contained and were coated with talc.

On July 13, 1915, the defendant company withdrew its plea of not guilty theretofore entered and entered a plea of nolo contendere to the information, and the court imposed a fine of $25.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *November 5, 1915.*

4041. Adulteration of candy. U. S. v. National Candy Co. Plea of nolo contendere. Fine, $25. (F. & D. Nos. 2939, 3146, 3293. I. S. Nos. 13823-c, 13822-c, 70-c.)

On January 27, 1912, the United States attorney for the Western District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the National Candy Co., a corporation, doing business at Buffalo, N. Y., alleging shipment by said company, in violation of the Food and Drugs Act:

(1) On January 28, 1911, from the State of New York into the State of Massachusetts, of a quantity of candy called "Navy Sweets" which was adulterated. The product was labeled: "Navy 10 1 cent M. M. Eggs Guaranteed S. N. 1637" "Navy Sweets 10 for a cent Sibley Holmwood factory, National Candy Co., Buffalo."

Analysis of a sample of this product by the Bureau of Chemistry of this department showed that said product contained talc.

Adulteration of the product was alleged in the information for the reason that said candy contained, among other ingredients, talc.

(2) On January 12, 1911, from the State of New York into the State of Missouri, of a quantity of candy which was adulterated. This product was labeled: "800 Eggs Bunny * * * Serial No. 1637 Navy (Trade Mark)" "8 Navy Sweets for a cent. Sibley Holmwood Factory, National Candy Co., Buffalo."

Analysis of a sample of this product by said Bureau of Chemistry showed that said product contained talc.

Adulteration of this product was alleged in the information for the reason that it contained talc.

(3) On January 12, 1911, from the State of New York into the State of Missouri, of a quantity of candy which was adulterated. This product was labeled: "Bird and Eggs ('Navy' Trade Mark) Serial No. 1637." "Navy Sweets 8 for a cent. Sibley Holmwood Factory, National Candy Co., Buffalo."

Analysis of a sample of this product by said Bureau of Chemistry showed that said product contained talc.

Adulteration of this article was alleged in the information for the reason that it contained talc.

On June 15, 1915, the defendant company entered a plea of nolo contendere to the information, and the court imposed a fine of $25.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *November 5, 1915.*

4042. Adulteration of candy. U. S. v. National Candy Co. Plea of guilty. Fine, $50. (F. & D. No. 2943. I. S. Nos. 13824-c, 13825-c.)

On October 18, 1911, the United States attorney for the Eastern District of Michigan, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the National Candy Co., a corporation, and the Gray-Toynton-Fox Factory, a subsidiary company thereof, doing business at Detroit, Mich., alleging shipment by said company, in violation of the Food and Drugs Act, on January 21, 1911, from the State of Michigan into the State of Missouri, of a quantity of candy which was adulterated. Part of the product was labeled: "Creamery Brand Rouge Easter Assortment Guaranty legend Serial No. 2842." (Card in box) "Cream of Sweets Eight for One Cent National Candy Company." The remainder of the product was labeled: "Creamery Brand Wayne Easter Assortment Guaranty legend Serial No. 2842." (Card in box) "Cream of Sweets Eight for One Cent National Candy Co."

Analyses of samples from both brands of the candy, by the Bureau of Chemistry of this department, showed that the product contained talc.

Adulteration of the product was alleged in the information for the reason that, by an analysis made by the Bureau of Chemistry of the Department of Agriculture of the United States of America of said product, the same was found to contain one tenth of 1 per cent of talc.

On June 8, 1915, the defendant company withdrew the plea of not guilty theretofore entered and entered a plea of guilty to the information, and the court imposed a fine of $50.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *November 5, 1915.*

4043. Adulteration of oysters. U. S. v. John H. Miles et al. (J. H. Miles & Co.). Plea of nolo contendere. Fine, $30. (F. & D. No. 2987. I. S. No. 18332-c.)

On August 13, 1912, the United States attorney for the Eastern District of Virginia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against John H. Miles, Bennett P. Miles, and Rufus L. Miles, a partnership, trading and doing business as J. H. Miles & Co., Norfolk, Va., alleging shipment by said defendants, in violation of the Food and Drugs Act, on March 18, 1911, from the State of Virginia into the District of Columbia, of a quantity of oysters which were adulterated.

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

Solids in oyster meat (per cent)	11.6
Loss on boiling (per cent)	59.7
Salt in oyster meat (per cent)	0.06
Salt in oyster liquor (per cent)	0.21

Adulteration of the product was alleged in the information for the reason that a certain substance, to wit, added water, had been mixed and packed with it so as to reduce and lower and injuriously affect its quality and strength, and such had been substituted in part for such article.

On January 18, 1915, the defendants entered a plea of nolo contendere to the information, and the court imposed a fine of $10 on each defendant, making an aggregate fine of $30.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *November 5, 1915.*

4044. Adulteration of confectionery. U. S. v. The National Candy Co. Plea of guilty. Fine, $25 and costs. (F. & D. No. 3109. I. S. No. 17335-c.)

On February 13, 1912, the United States attorney for the Southern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against The National Candy Co., a corporation organized under the laws of New Jersey, having a place of business at Cincinnati, Ohio, known and designated as the P. Echert Factory of The National Candy Co., J. H. Hart, manager in charge, Cincinnati, Ohio, alleging shipment by said defendants, in violation of the Food and Drugs Act, on January 23, 1911, from the State of Ohio into the State of Minnesota, of a quantity of confectionery which was adulterated. The product was labeled: "Acme—Eagles Nest—Acme. Serial No. 3645, Guaranteed under the Food and Drugs Act, June 30, 1906, * * *."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed that the product contained talc.

Adulteration of the product was alleged in the information for the reason that it contained a certain mineral substance, to wit, talc.

On May 25, 1915, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $25 and costs. The information was nol prossed as to the defendant J. H. Hart.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *November 5, 1915.*

4045 (Supplement to Notice of Judgment 1841). Misbranding of "Cream of Hops." U. S. v. Temperance Beverage Co. Plea of guilty. Fine, $100 and costs. (F. & D. No. 3162. I. S. No. 892-d. S. No. 1153.)

On October 11, 1912, the United States attorney for the Northern District of Illinois filed in the District Court of the United States for said district an information against the Temperance Beverage Co., a corporation, Chicago, Ill., alleging shipment by said company, in violation of the Food and Drugs Act, on September 27, 1911, from the State of Illinois into the State of Iowa, of a quantity of "Cream of Hops" which was misbranded. The barrels in which the product was shipped were labeled in part: "10 Doz. Small—Cream of Hops—Temp. Bev. Co.—Temperance Beverage Co., Neola, Iowa, Nfy. W. R. Currie—Temperance Beverage Co., 173 N. Michigan Avenue, Chicago, Ill." The bottles contained in the barrels were labeled in part: "A Non-Intoxicating Beer—Refreshing—Invigorating—Improved Cream of Hops—The Great Health Drink sold only and guaranteed by Temperance Beverage Company—Distributors—Chicago, under the Food and Drugs Act, June 30, 1906—Serial No. 16427."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed that the product contained 3.46 per cent by volume of alcohol.

Misbranding of the article was alleged in the information for the reason that each of the bottles containing the same bore a label in words and figures as follows (except as to certain representations thereon impossible here to reproduce), to wit, "A Non-Intoxicating Beer—Refreshing—Invigorating—Improved Cream of Hops—The Great Health Drink sold only and guaranteed by Temperance Beverage Company—Distributors—Chicago, under the Food and Drugs Act, June 30, 1906—Serial No. 16427," which said labels were false and misleading, in that the labels stated that the said article of food was nonintoxicating, whereas, in truth and in fact, the said article of food contained a large amount, to wit, 3.48 [3.46] per centum by volume, of alcohol, which said alcohol rendered the same intoxicating.

On June 14, 1915, the defendant company entered a plea of guilty to the information, and on June 30, 1915, the court imposed a fine of $100 and costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *November 5, 1915.*

4046. Adulteration of confectionery. U. S. v. National Candy Co. Plea of guilty. Fine, $50 and costs. (F. & D. No. 3319. I. S. No. 13151-c.)

On January 26, 1912, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against The National Candy Co., a corporation, doing business at Chicago, Ill., alleging shipment by said company, in violation of the Food and Drugs Act, on May 10, 1911, from the State of Illinois into the State of Pennsylvania, of a quantity of confectionery known as "Pan Spiced Jumbo Jelly Beans" which was adulterated.

Analysis of a sample of the product by the Bureau of Chemistry of this department showed that the product contained talc.

Adulteration was alleged in the information for the reason that the article of food contained talc, and for the further reason that it contained a mineral substance consisting in part of talc and magnesium silicate, the exact proportion of which said mineral substance was to the United States attorney unknown.

On July 9, 1915, the defendant company withdrew its plea of not guilty theretofore entered, and entered a plea of guilty to the information, and, on July 12, 1915, the court imposed a fine of $50 and costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *November 5, 1915.*

4047 (Supplement to Notice of Judgment 3334). Alleged adulteration and misbranding of fruit wild cherry compound and misbranding of special lemon, lemon terpene, and citral. U. S. v. Oscar J. Weeks (O. J. Weeks & Co.). Decision of the Circuit Court of Appeals for the Second Circuit, reversing the judgment of conviction in the fruit wild cherry compound case and affirming the judgment of conviction in the special lemon, lemon terpene, and citral case. (F. & D. Nos. 3553, 4672. I. S. Nos. 1346–d, 14195–d.)

On January 19, 1914, Oscar J. Weeks, doing business under the firm name and style of O. J. Weeks & Co., New York, N. Y., filed his petition praying that a writ of error be allowed directed to the United States District Court for the Southern District of New York in two proceedings involving the interstate shipment by said defendant, in violation of the Food and Drugs Act, of a quantity of fruit wild cherry compound which was alleged to have been adulterated and misbranded, and of a quantity of special lemon, lemon terpene, and citral which was misbranded. On the same date an order allowing the writ of error was filed, with the assignments of error.

On June 1, 1913, certain demurrers to these informations that had been filed in the District Court of the United States for the Southern District were overruled, as will more fully appear from the following memorandum opinion by the court (Hand, *D. J.*):

I think that neither proviso applies, not the first because the article is alleged to be an imitation, not the second because neither "wild cherry" nor "wild cherry compound" is a proper label for "wild cherry imitation." Upon the latter I should in any case follow Judge Mayer's decision, with which I entirely agree independently.

The information does not raise the point whether the first clause of section 8, quoted above, applies where the sale is not by label at all. If it does apply, then the defendant has sold an imitation of wild cherry as wild cherry itself; if it does not then the defendant has sold an imitation of wild cherry under a label, "Wild Cherry Compound." Either state of facts is within the act, once the provisos do not protect him.

Demurrer overruled.

On October 16, 1914, the bill of exceptions in the cases was settled and thereafter the record was transmitted to the Circuit Court of Appeals for the Second Circuit.

On May 13, 1915, the cases having come on for final hearing in said circuit court of appeals, before Lacombe, Ward, and Rogers, *C. J.*, the judgment of conviction in the fruit wild cherry compound case was reversed and the judgment of conviction in the special lemon, lemon terpene, and citral case was affirmed, as will more fully appear from the following decision by the court (Lacombe, *C. J.*):

This cause comes here upon writ of error to review a judgment convicting plaintiff in error, who was defendant below, of violation of the Food and Drugs Act of June 30, 1906. There were three informations, and two counts under each. The first information dealt with an article of food called "Fruit Wild Cherry Compound." The first count on this information was quashed before trial. The second count charged shipment of such an article, which was misbranded, because it was labeled "Fruit Wild Cherry Compound," whereas it consisted chiefly of imitation wild cherry essence artificially colored.

The second information, in its first count, charged the shipping of the article which "was adulterated in that it was artificially colored with a coal-tar dye in such manner as to simulate a fruit wild cherry and in a manner whereby its inferiority was concealed." The second count charged the selling and offering for sale of the article under the distinctive name of another article. The article and the label in all these counts were the same.

The third information in its fruit [first] count charged the shipment of an article of food labeled "Special Lemon. Lemon Terpene and Citral." This label was charged to be false and misleading because the statement in it would indicate that the article was a product derived from lemon, whereas it was in fact not a product derived from lemon, but was a mixture containing alcohol and citral derived from lemon grass and was an imitation of lemon oil. The second count charged the offering of such article for sale under the distinctive name of another article—to wit, a product derived from lemon.

Defendant was convicted under all five counts.

The case calls for the construction of sections 7 and 8 of the Pure Food and Drugs Act. Prior sections forbid in general terms the manufacture and shipment in interstate commerce of any article of food or drugs which is adulterated or misbranded. Those two sections (7 and 8) undertake to define the words "adulterated" and "misbranded" as used in the statute. Had they been phrased in general terms it might not be difficult to construe and apply them to the concrete facts of each case as they are developed on a trial. But the draftsman apparently thought that the more words he used the more plainly would he express the meaning intended. Not unnaturally an opposite result has been accomplished. The sections are most difficult of construction; possibly the phrasing of some of their provisions may operate to defeat the object probably intended. But we can not rewrite the sections; if amendment be needed to make the act effective that will be a matter for the consideration of Congress

Considering, now, the charges as to the "Fruit Wild Cherry Compound," the labeling of which it is contended violates the provisions of section 8, subhead "In the case of food." The label indicates, we should suppose, to any intelligent mind that the article is a compound into which "Fruit Wild Cherry" has entered at least in sufficient quantity fairly to warrant the use of these quoted words. The testimony of defendant's own witness shows that the article contains absolutely no "Fruit Wild Cherry." It is therefore clearly within section 8, "Food" subdivision, paragraph second, because it is "so labeled as to mislead the purchaser," and also within paragraph fourth, because its label bears "a statement regarding the ingredients or the substances contained therein, which statement (is) false or misleading in (the particular) that the compound contains Fruit Wild Cherry." If this were all, one might leave the subject with a conviction that the statute, in its application to this case, had accomplished its apparent object. But the act contains an important proviso, apparently tacked on to the bill to protect various combinations on the market at the time. In order to appreciate the full force of this proviso, which concludes section 8, it is here quoted:

Provided, That an article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded in the following cases:

First. In the case of mixtures or compounds which may be now or from time to time hereafter known as articles of food, under their own distinctive names, and not an imitation of or offered for sale under the distinctive name of another article, if the name be accompanied on the same label or brand with a statement of the place where said article has been manufactured or produced.

Second. In the case of articles labeled, branded, or tagged so as to plainly indicate that they are compounds, imitations, or blends, and the word "compound," "imitation," or "blend," as the case may be, is plainly stated on the package in which it is offered for sale: *Provided*, That the term blend as used herein shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring and flavoring only: *And provided further*, That nothing in this act shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredient to disclose their trade formulas, except in so far as the provisions of this act may require to secure freedom from adulteration or misbranding.

Now there is not a scintilla of evidence in the case to show that defendant's article contains "any added poisonous or deleterious ingredients"; therefore it is covered by the proviso (second clause), because it is "labeled to plainly indicate that it is a compound," and the word "compound" is plainly stated on the package. In consequence it can not, under the proviso, "be deemed to be misbranded."

(2) In the second information the charge is brought under section 7 of the act, which enumerates the conditions which will constitute adulteration of an article for the purposes of the act. The charge is that "Fruit Wild Cherry Compound" was adulterated, in that it was "artificially colored with a coal-tar dye in such a manner as to simulate a true fruit wild cherry and in a manner whereby its inferiority was concealed." Section 7 contains this clause:

"Fourth. If it be mixed, colored, powdered, coated, or stained in a manner whereby damage or inferiority is concealed."

The shipment is the same as that covered by the first information. The label is the same "Fruit Wild Cherry Compound." Manifestly the label does not state that the article is "Fruit Wild Cherry," but only that it is a *compound* which contains fruit wild cherry. Defendant's witness, who was familiar with the manufacture of the compound, testified that they soak wild cherry bark in water, filter the infusion, dilute it with alcohol, add benzaldehyde or oil of bitter almonds, fruit juice of raspberries, and some extract of orris and oil of rose. No fruit wild cherry enters into the compound. There was testimony from which the jury might find that the compound also contained a coal-tar color known as amaranth; that genuine fruit wild cherry has a red color; that the compound described by defendant containing fluid extract of wild cherry bark would not have this color; and that the amaranth gave to the mixture the genuine color of wild cherry juice. The testimony seems to indicate that the bark infusion of wild cherry is inferior to the fruit juice, and we should be inclined to sustain the verdict were it not for the proviso as to "compounds" above quoted.

That proviso is found at the close of section 8, which section undertakes exhaustively to define "misbranding." Under ordinary rules of construction the operation of the proviso might be restricted to the section in which it appears, and it might be held not to qualify section 7, which defines "adulterations." But the draftsman of the act has been careful not thus to restrict it, because the proviso begins: "That an article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be *adulterated or misbranded* in the following cases."

Then follows the enumeration above set forth. The article in question is an article of food, and the information does not charge, nor does the testimony show, that there have been added to the compound "poisonous or deleterious ingredients." The proviso therefore requires a reversal of the conviction under this count.

(3) The second information deals with a different article, labeled "Special Lemon. Lemon Terpene and Citral." The first count charged that the article was misbranded; that the label was misleading in that the statement would indicate that the article was a product derived from lemon, whereas the product was not a product derived from lemon, but was a mixture containing alcohol and citral derived from lemon grass and an imitation of lemon oil. The article seems not to be covered by the proviso, because the *word* "compound" is not "plainly stated on the package in which it is offered for sale."

The question is, Was the label false and misleading? It obviously indicated that the so-called "special lemon" was a compound of which lemon terpene and citral were components. The words "special lemon" do not of course import that the article was "lemon," a word which in ordinary speech denotes the fruit of a well-known citrus tree. There is no testimony that this word, standing by itself, has any distinctive trade meaning; there are lemon oils, lemon extracts, lemon juice, lemon essence, etc. The use of the words "special lemon" does not import any representation that the article is a variety of lemon oil. The testimony shows that lemon terpenes are the oily part—the hydrocarbon oils of the lemon, of the lemon peels; they are a by-product from the manufacture of lemon flavor. Citral is derived from lemon grass, a grass that grows in the East Indies. Where we have a label which indicates that the contents of the package consists of a compound of lemon terpene and citral, which compound the manufacturer designates as "special lemon," and the contents agree with the designation, we do not see how it can be held that there has been a misbranding within the meaning of the act.

(4, 5) The second count charges that the same article was offered for sale as a product derived from lemon. A witness called by the Government, who was engaged in the manufacture of crackers at Atlanta, Ga., testified that he was visited there by a salesman of defendant; that the salesman showed him a sample in a bottle and told him it was pure lemon oil, which he was able to sell at a low price because it was "second pressing." The witness ordered some of it, which was sent to him by defendant. The salesman, called by defendant, denied the making of any statements as to the article being lemon oil. Upon this conflict of evidence the finding of the jury that the representations were made is controlling here, and it must be held that there was a misbranding under the statute, because section 8 defines misbranding as, inter alia, "offering an article for sale" under the distinctive name of another article, even though no label describing it as such other article be actually affixed to it.

(6) Since intent is not an element of the offense, defendant must be held liable for the act of his sales agent, although he had told him not to misdescribe the article.

The judgment under this count is affirmed.

The court thereafter denied the petition of the Government for a rehearing in the fruit wild cherry compound case. An application for a writ of certiorari to the Supreme Court of the United States will probably be made in this case.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *November 5, 1915.*

4048. Adulteration and misbranding of acetanilid tablets, codeine tablets, nux vomica tablets, phenacetin tablets, strychnine sulphate tablets, sodium salicylate tablets, tincture of belladonna, and acetanilid and soda compound tablets. U. S. v. Stearns & White Co., a corporation. Plea of guilty. Fine, $100 and costs. (F. & D. Nos. 3558, 4238. I. S. Nos. 9895-d, 9900-d, 11202-d, 11203-d, 11206-d, 11207-d, 11208-d, 9896-d.)

On January 20, 1914, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district two informations against the Stearns & White Co., a corporation, Chicago, Ill., alleging shipment by said defendant, in violation of the Food and Drugs Act, on July 26 and 28, 1911, from the State of Illinois into the State of Michigan, of quantities of acetanilid tablets, codeine tablets, nux vomica tablets, phenacetin tablets, strychnine sulphate tablets, sodium salicylate tablets, tincture of belladonna, and acetanilid and soda compound tablets, which were adulterated and misbranded.

Analysis of a sample of the acetanilid tablets by the Bureau of Chemistry of this department showed that the product contained acetanilid per tablet, 3.78 grains.

Adulteration of this product was alleged in the first information for the reason that the label appearing upon the bottle containing the drug product represented to the purchaser that each of the acetanilid tablets contained 5 grains of acetanilid, whereas, in truth and in fact, the strength of each acetanilid tablet fell below the professed standard under which the drug product had been sold and shipped, as aforesaid, in that each of the acetanilid tablets contained not to exceed 3.78 grains of acetanilid.

Misbranding was alleged for the reason that the bottle containing the drug product bore a label in words and figures as follows, to wit, "500 Compressed Tablets. Pink. Acetanilid 5 grains. From the Laboratory of Stearns & White Co. Manufacturing Chemists, Chicago. Guaranteed by Stearns & White Co., under the Food and Drugs Act, June 30, 1906. Serial No. 2937," which said statement on the label, appearing on the bottle containing the drug product, was false and misleading in that said statement represented to the purchaser that each of the acetanilid tablets contained 5 grains of acetanilid, whereas, in truth and in fact, the strength of each acetanilid tablet fell below the professed standard under which the drug product had been sold and shipped as aforesaid, in that each of the acetanilid tablets contained not to exceed, to wit, 3.78 grains of acetanilid.

Analysis of a sample of the codeine tablets by said Bureau of Chemistry showed codeine per tablet, one-sixth of a grain.

Adulteration of this product was alleged in the first information for the reason that the label appearing upon the bottle containing the drug product represented to the purchaser that each of the codeine tablets contained one-fourth of a grain of codeine, whereas, in truth and in fact, the strength of each codeine tablet fell below the professed standard under which the drug product had been sold and shipped, as aforesaid, in that each of the codeine tablets contained not to exceed one-sixth of a grain of codeine.

Misbranding of this product was alleged for the reason that the bottle containing the same bore a label in words and figures as follows, to wit, "Compressed Tablets. Codeine. C. P. 1-4 Grain. From the Laboratory of Stearns & White Co. Manufacturing Chemists Chicago. Guaranteed by Stearns & White Co., under the Food and Drugs Act, June 30, 1906. Serial No. 2937," which said statement on the label appearing on the bottle containing the drug product was false and misleading in that said statement represented to the purchaser that each of the codeine tablets contained one-fourth of a grain of codeine, whereas, in truth and in fact, the strength of each codeine tablet fell below the professed standard under which the drug product had been sold and shipped, as aforesaid, in that each of the codeine tablets contained not to exceed, to wit, one-sixth of a grain of codeine.

Analysis of a sample of the nux vomica tablets by said Bureau of Chemistry showed nux vomica extract per tablet, three-twentieths of a grain.

Adulteration of this product was alleged in the first information for the reason that the label appearing upon the bottle containing the same represented to the purchaser that each of the nux vomica tablets contained one-fourth grain of nux vomica extract, whereas, in truth and in fact, the strength of each nux vomica tablet fell below the professed standard under which the drug product had been sold and shipped, as aforesaid, in that each of the nux vomica tablets contained not to exceed three-twentieths of a grain of nux vomica.

Misbranding was alleged for the reason that the bottle containing the drug product bore a label in words and figures as follows, to wit, "1000 Compressed Tablets Nux Vomica Ext. 1-4 grain. Stearns & White Co. Mfg. Chemists, Chicago. Guaranteed by Stearns & White Co., under the Food and Drugs Act, June 30, 1906, Serial No. 2937," which said statement on the label appearing on the bottle containing the drug product was false and misleading in that said statement represented to the purchaser that each of the nux vomica tablets contained one-fourth of a grain of nux vomica extract, whereas, in truth and in fact, the strength of each nux vomica tablet fell below the professed standard under which the drug product had been sold and shipped, as aforesaid, in that each of the nux vomica tablets contained not to exceed three-twentieths of a grain of nux vomica extract.

Analysis of a sample of the phenacetin tablets by said Bureau of Chemistry showed that the product contained phenacetin per tablet, 3.90 grains.

Adulteration of this product was alleged in the first information for the reason that the label appearing upon the bottle containing the drug product represented to the purchaser that each of the phenacetin tablets contained 5 grains of acetphenetidin (phenacetin), whereas, in truth and in fact, the strength of each phenacetin tablet contained in the bottle aforesaid fell below the professed standard under which the drug product had been sold and shipped, as aforesaid, in that each of the phenacetin tablets contained not to exceed 3.90 grains of acetphenetidin (phenacetin).

Misbranding of this product was alleged for the reason that the bottle containing the same bore a label in words and figures as follows, to wit, "500 Compressed Tablets. Phenacetine 5 grains. Dose.—One or two tablets. Guaranteed by Stearns & White Co., under the Food and Drugs Act, June 30, 1906. Serial No. 2937. From the Laboratory of Stearns & White Co. Manufacturing Chemists, Chicago," which said statement on the label was false and misleading in that said statement represented to the purchaser that each of the phenacetin tablets contained 5 grains of acetphenetidin (phenacetin), whereas, in truth and in fact, the strength of each phenacetin tablet fell below the professed standard under which the drug product had been sold and shipped, as aforesaid, in that each of the phenacetin tablets contained not to exceed 3.90 grains of acetphenetidin (phenacetin).

Analysis of a sample of the strychnine sulphate tablets by said Bureau of Chemistry showed strychnine sulphate per tablet, one fifty-sixth of a grain.

Adulteration of this product was alleged in the first information for the reason that the label appearing upon the bottle containing said drug product represented to the purchaser that each of the strychnine sulphate tablets contained one-fortieth of a grain of strychnine sulphate, whereas, in truth and in fact, the strength of each strychnine sulphate tablet fell below the professed standard under which the drug product had been sold and shipped, as aforesaid, in that each of the strychnine sulphate tablets contained not to exceed one fifty-sixth of a grain of strychnine sulphate.

Misbranding was alleged for the reason that the bottle containing the drug product bore a label in words and figures as follows, to wit, (Neck label) "1000." (On bottle) "Compressed Tablets Strychnine Sulphate. 1-40 grain. From the Laboratory of Stearns & White Co. Manufacturing Chemists. Chicago. Guaranteed by Stearns & White Co., under the Food and Drugs Act, June 30, 1906. Serial No. 2937," which said statement on the label appearing on the bottle was false and misleading in that said statement represented to the purchaser that each of the strychnine sul-

phate tablets contained one-fortieth of a grain of strychnine sulphate, whereas, in truth and in fact, the strength of each strychnine sulphate tablet fell below the professed standard under which the drug product had been sold and shipped, as aforesaid, in that each of the strychnine sulphate tablets contained not to exceed one fifty-sixth of a grain of strychnine sulphate.

Analysis of a sample of the sodium salicylate tablets by said Bureau of Chemistry showed that the product contained sodium salicylate per tablet, 3.45 grains.

Adulteration of this product was alleged in the first information for the reason that the label appearing upon the bottle containing the drug product represented to the purchaser that each of the sodium salicylate tablets contained 5 grains of sodium salicylate, whereas, in truth and in fact, the strength of each sodium salicylate tablet fell below the professed standard under which the drug product had been sold and shipped, as aforesaid, in that each of the sodium salicylate tablets contained not to exceed 3.45 grains of sodium salicylate.

Misbranding was alleged for the reason that the bottle containing the drug product aforesaid bore a label in words and figures as follows, to wit, "1000 Compressed Tablets. Sodium Salicylate 5 grains. Stearns & White Co. Mfg. Chemists, Chicago. Guaranteed by Stearns & White Co., under the Food and Drugs Act, June 30, 1906. Serial No. 2937," which said statement on the label appearing on the bottle containing said drug product was false and misleading in that said statement represented to the purchaser that each of the sodium salicylate tablets contained 5 grains of sodium salicylate, whereas, in truth and in fact, the strength of each sodium salicylate tablet fell below the professed standard under which the drug product had been sold and shipped, as aforesaid, in that each of the sodium salicylate tablets contained not to exceed 3.45 grains of sodium salicylate.

Analysis of a sample of the tincture of belladonna by said Bureau of Chemistry showed the following results:

Alcohol (per cent by volume)	57.1
Alkaloid (gram per 100 cc.)	0.0189

Adulteration of this product was alleged in the first information for the reason that the label appearing upon the bottle containing said drug product represented to the purchaser that the tincture of belladonna was of the standard of strength, quality, and purity, as determined by the test laid down in the United States Pharmacopœia, whereas, in truth and in fact, the drug product did not comply with said test aforesaid, in that the drug product did not contain three one-hundredths of a gram of alkaloid derived from belladonna leaves per 100 cubic centimeters of the drug product aforesaid, but contained not to exceed, to wit, 0.0189 gram of alkaloid derived from belladonna leaves per 100 cubic centimeters of the drug product aforesaid.

Misbranding was alleged for the reason that the bottle containing the drug product bore a label in words and figures as follows, to wit, "Tinct. Belladonna, U. S. P., Alcohol 47 per cent. Stearns & White Co. Manufacturing Chemists Chicago, Guaranteed by Stearns & White Co. under the Food and Drugs Act, June 30, 1906, Serial No. 2937," which said statement on the label appearing on the bottle was false and misleading in that said statement represented to the purchaser that the tincture of belladonna was of the standard of strength, quality, and purity, as determined by the test laid down in the United States Pharmacopœia, whereas, in truth and in fact, the drug product aforesaid did not comply with said test aforesaid in that the drug product did not contain three one-hundredths of a gram of alkaloid derived from belladonna leaves per 100 cubic centimeters of the drug product aforesaid, but contained not to exceed, to wit, 0.0189 gram of alkaloid derived from belladonna leaves per 100 cubic centimeters of the drug product aforesaid. Misbranding was alleged for the further reason that said statement on the label was false and misleading in that said statement represented to the

purchaser that the drug product contained 47 per cent of alcohol, whereas, in truth and in fact, the drug product contained a larger amount of alcohol, to wit, 57 per cent.

Analysis of a sample of the acetanilid and soda compound tablets by said Bureau of Chemistry showed the following results:

Acetanilid per tablet (grains)	1.966
Citrate caffeine per tablet (grain)	0.905

Adulteration of this product was alleged in the second information for the reason that the label borne upon the bottle containing the drug product represented to the purchaser that each of the acetanilid and soda tablets contained 2½ grains of acetanilid per tablet, whereas, in truth and in fact, the strength of each acetanilid and soda tablet fell below the professed standard under which the drug product had been sold and shipped, as aforesaid, in that each of the acetanilid and soda tablets contained not to exceed, to wit, 1.966 grains of acetanilid per tablet.

Misbranding was alleged for the reason that the bottle containing the drug product aforesaid bore a label in words and figures as follows, to wit, "1000 3573B Compressed Tablet, Acetanilid and Soda Comp. Acetanilid 2½ grs. Sodium Bicarb. 2½ grs. Citrate Caffeine 1 gr. Tr. Gelsemium 3 min. Guaranteed under the Food and Drugs Act, June 30, 1906. Serial No. 2937. Manufactured by Stearns & White Co. Manufacturing Chemists, Chicago," which said statement on the label appearing on the bottle was false and misleading in that said statement represented to the purchaser that each of the acetanilid and soda tablets contained 2½ grains of acetanilid per tablet, whereas, in truth and in fact, the strength of each acetanilid and soda tablet fell below the professed standard under which the drug product aforesaid had been sold and shipped, in that each of the acetanilid and soda tablets contained not to exceed, to wit, 1.966 grains of acetanilid. Misbranding was alleged for the further reason that said statement on the label misled and deceived the purchaser into the belief that each of the acetanilid and soda tablets contained 2½ grains per tablet, whereas, in truth and in fact, the strength of each acetanilid and soda tablet fell below the professed standard under which the drug product had been sold and shipped as aforesaid, in that each of the acetanilid and soda tablets contained not to exceed, to wit, 1.966 grains of acetanilid.

On October 30, 1914, the two informations were consolidated into one court proceeding and thereupon a plea of guilty was entered by the defendant company and the cause was taken under advisement by the court. On March 26, 1915, the case having come on for final disposition, the court imposed a fine of $100 and costs upon the plea of guilty theretofore entered.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *November 5, 1915.*

4049. Adulteration of shellac. U. S. v. Edwin A. Rogers (E. A. Rogers & Co.). Plea of nolo contendere; information placed on file. (F. & D. No. 3564. I. S. No. 19146-c.)

On June 15, 1912, the United States attorney for the District of Massachusetts, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Edwin A. Rogers, doing business under the firm name and style of E. A. Rogers & Co., Boston, Mass., alleging shipment by said defendant, in violation of the Food and Drugs Act, on April 27, 1911, from the State of Massachusetts into the State of Tennessee, of a quantity of food, to wit, shellac, which was adulterated.

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

Arsenic as As_2O_3 (parts per million)	30.2 40.0 40.1
Average of three determinations (parts per million)	36.8

Adulteration of the article was alleged in the information for the reason that it contained an added poisonous and deleterious ingredient, to wit, arsenic, which rendered said food injurious to health.

On June 8, 1915, the defendant entered a plea of nolo contendere to the information and the same was placed on file on motion of the United States attorney.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *November 5, 1915.*

4050. Adulteration and misbranding of "Prime Vanilla Extract." U. S. v. Hudson Mfg. Co. Plea of guilty. Fine, $200 and costs. (F. & D. No. 3905. I. S. No. 13064-d.)

On April 3, 1914, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Hudson Mfg. Co., a corporation, Chicago, Ill., alleging shipment by said company, in violation of the Food and Drugs Act, on July 28, 1911, from the State of Illinois into the State of Pennsylvania, of a quantity of "prime vanilla extract" which was adulterated and misbranded.

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

Vanillin (per cent)	0.19
Vanillin, melting point (°C.)	79.0
Coumarin: None.	
Resins: Small amount.	
Normal lead number	0.23
Color value of extract:	
Red	43.0
Yellow	55.0
Color value of lead filtrate:	
Red	6.2
Yellow	5.8
Original color in lead filtrate:	
Red (per cent)	14.4
Yellow (per cent)	10.5
Ratio red to yellow, extract	1:1.3
Ratio red to yellow, lead filtrate	1:0.9

Adulteration of the product was alleged in the information for the reason that another substance, to wit, vanillin, had been mixed and packed with the article of food aforesaid in such a manner as to reduce and lower and injuriously affect its quality and strength; further, for the reason that another substance, to wit, vanillin, had been substituted in part for the article of food aforesaid in such a manner as to reduce and lower and injuriously affect its quality and strength; further, for the reason that another substance, to wit, vanillin, had been substituted wholly for the article of food aforesaid in such a manner as to reduce and lower and injuriously affect its quality and strength; and, further, for the reason that the article of food aforesaid had been colored in a manner whereby its inferiority was concealed [and] in such a manner as to reduce and lower and injuriously affect its quality and strength.

It was further alleged in the information that the article was misbranded in that the keg containing the same bore a label in words and figures as follows, to wit, "Prime Vanilla Extract. Made from the Extractive Matter of Prime Vanilla Beans and Sweetened with Cane Sugar, Aged in Wood. Made by the Hudson Manufacturing Company, Chicago, U. S. A.," which said statement on the label appearing on the keg containing the article was false and misleading in that the statement, "Prime Vanilla Extract. Made from the Extractive Matter of Prime Vanilla Beans and Sweetened with Cane Sugar, Aged in Wood," represented to the purchaser that the article of food aforesaid was a true and full-strength extract of vanilla, whereas, in truth and in fact, it was not a true full-strength vanilla extract, but was a dilute vanilla extract fortified with vanillin. Misbranding was alleged for the further reason that said statement appearing on the label on the keg aforesaid containing the article of food misled and deceived the purchaser into the belief that the article of food was a full-strength vanilla extract, whereas, in truth and in fact, it was not a true full-strength vanilla extract, but consisted of a dilute extract of vanilla fortified with vanillin. Misbranding was alleged for the further reason that said statement on the label appearing on the keg aforesaid

containing the article of food was false and misleading in that said statement represented to the purchaser that the article of food was a full-strength extract of vanilla, whereas, in truth and in fact, it was not a true full-strength vanilla extract, but was a dilute vanilla extract made in imitation of full-strength extract of vanilla. Misbranding was alleged for the further reason that said statement on the label appearing on the keg aforesaid containing the article of food was false and misleading in that said statement represented to the purchaser that the article of food aforesaid was a full-strength extract of vanilla, whereas, in truth and in fact, it was a dilute extract of vanilla fortified with vanillin, and offered for sale under the distinctive name of a full-strength vanilla extract.

On November 2, 1914, the defendant company withdrew its plea of not guilty theretofore entered, and entered a plea of guilty to the information, and the cause was thereupon continued for disposition.

On March 26, 1915, the case having come on for final disposition, the court imposed a fine of $200 and costs upon the defendant corporation upon the plea of guilty theretofore entered.

(The report of this department, upon which proceedings in this case were based, did not include the finding that the product was colored in a manner whereby inferiority was concealed.)

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *December 4, 1915.*

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U. S. DEPARTMENT OF AGRICULTURE,

BUREAU OF CHEMISTRY.

C. L. ALSBERG, Chief of Bureau.

SERVICE AND REGULATORY ANNOUNCEMENTS.

SUPPLEMENT.

N. J. 4051–4100.

NOTICES OF JUDGMENT UNDER THE FOOD AND DRUGS ACT.

[Given pursuant to section 4 of the Food and Drugs Act.]

4051. Misbranding of "Cream of Hops" and "Hop Tonic." U. S. v. Temperance Beverage Co. Pleas of guilty. Fine, $200 and costs. (F. & D. No. 3975. I. S. Nos. 863-d, 864-d.)

On October 11, 1912, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district two informations against the Temperance Beverage Co., a corporation, Chicago, Ill., alleging shipment by said company, in violation of the Food and Drugs Act, from the State of Illinois into the State of Iowa, on August 21, 1911, of a quantity of "Improved Cream of Hops" which was misbranded, and, on September 13, 1911, of a quantity of "Hop Tonic" which was misbranded. The "Cream of Hops" was labeled: "A Non-Intoxicating Beer Refreshing Invigorating Improved Cream of Hops The Great Health Drink. Sold only and Guaranteed by Temperance Beverage Company, Distributers Chicago. Under the Food and Drugs Act, June 30, 1906, Serial No. 16427." The "Hop Tonic" was labeled: "A Non-Intoxicating Temperance Beer Hop Tonic. A delightful Beverage Sold only and guaranteed by Temperance Beverage Co. Distributers Chicago. Under the Food and Drugs Act, June 30, 1906. Serial No. 16427."

Analyses of samples of these two products by the Bureau of Chemistry of this department showed the following results:

	"Cream of Hops."	"Hop Tonic."
Alcohol (per cent by volume)	3.62	3.31

Misbranding of the "Improved Cream of Hops" was alleged in one of the informations for the reason that each of the bottles containing the said article bore a label in words and figures as follows (except as to certain representations thereon impossible here to reproduce), to wit, "A Non-Intoxicating Beer Refreshing Invigorating Improved Cream of Hops The Great Health Drink. Sold only and Guaranteed by Temperance Beverage Company, Distributers Chicago. Under the Food and Drugs Act, June 30, 1906, Serial No. 16427," which said labels were false and misleading in that the labels stated that the article of food was nonintoxicating, whereas, in truth and in fact, the article of food contained a large amount, to wit, 3.62 per centum by volume, of alcohol, which said alcohol rendered the said article of food intoxicating.

Misbranding of the "Hop Tonic" was alleged in the other information for the reason that each of the bottles containing said article bore a label in words and figure as follows (except as to certain representations thereon impossible here to reproduce), to wit, "A Non-Intoxicating Temperance Beer Hop Tonic A delightful beverage sold only and Guaranteed by Temperance Beverage Co. Distributers Chicago. Under the Food and Drugs Act, June 30, 1906. Serial No. 16427," which said labels were false and misleading in that the labels stated that said article of food was nonintoxicating, whereas, in truth and in fact, the article of food contained a large amount, to wit, 3.31 per centum by volume, of alcohol, which said alcohol rendered the same intoxicating.

On June 14, 1915, the defendant company entered pleas of guilty to the informations, and on June 30, 1915, the court imposed a fine of $100 upon each information, making an aggregate fine of $200 with costs.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *December 4, 1915.*

4052. Misbranding of soluble gelatin capsules. U. S. v. American Druggists Syndicate. Plea of guilty. Fine, $25. (F. & D. No. 4152. I. S. No. 14640-c.)

On September 13, 1912, the United States attorney for the Eastern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the American Druggists Syndicate, a corporation, Long Island City, N. Y., alleging shipment by said company, in violation of the Food and Drugs Act, on or about March 22, 1911, from the State of New York into the State of Iowa, of a quantity of soluble gelatin capsules which were misbranded. The article was labeled: "100 Elastic Soluble Gelatine Capsules No. 40 Olive Oil Olive Oil, 20 Mins. Prepared for American Druggists Syndicate New York 100 Capsules Olive Oil 20 Mins. Guaranteed by The American Druggists Syndicate under the Pure Food and Drugs Act, June 30, 1906. Serial No. 1214. Keep Cool and Dry."

Examination of a sample of the product by the Bureau of Chemistry of this department showed that each capsule contained olive oil in an amount varying slightly in different capsules but representing 16.5 minims per capsule.

Misbranding of the article was alleged in the information for the reason that the label on the package, box, and carton bore statements, designs, and devices regarding said article and the ingredients and substances contained therein, which were false and misleading in that the statement "Elastic Soluble Gelatine Capsules No. 40 Olive Oil Olive Oil, 20 Mins." represented that said article and drug contained 20 minims of olive oil per capsule, whereas, in truth and in fact, the said article and drug did not contain 20 minims of olive oil per capsule, but contained only 16.5 minims of olive oil per capsule.

On June 30, 1915, the defendant company withdrew its plea of not guilty theretofore entered and entered a plea of guilty to the information, and on July 8, 1915, the court imposed a fine of $25.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *December 4, 1915.*

4053. Adulteration and misbranding of orangeade. U. S. * * * v. Francis Cropper * * * (The Francis Cropper Co.). Plea of guilty. Fine, $25. (F. & D. No. 4174. I. S. No. 3770-d.)

On January 20, 1914, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Francis Cropper, doing business as The Francis Cropper Co., Chicago, Ill., alleging shipment by said defendant, in violation of the Food and Drugs Act, on July 26, 1911, from the State of Illinois into the State of Minnesota, of a quantity of orangeade which was adulterated and misbranded.

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

Solids (per cent)	63.9
Nonsugar solids (per cent)	0.7
Reducing sugars before inversion (per cent)	61.7
Reducing sugars after inversion (per cent)	63.2
Sucrose, by copper (per cent)	1.37
Ash (per cent)	0.01
Nonvolatile acidity as citric (per cent)	1.00
Volatile acidity as acetic (per cent)	0.17
Tartaric acid (per cent)	0.29

Tartrates precipitated and washed give strong silver mirror test.

Citric acid: Present in considerable amounts; forms lead salt soluble in hot water, precipitating in cold.

Catechu: Present.

Adulteration of the product was alleged in the information for the reason that a substance, to wit, an invert sugar sirup artificially colored and artificially flavored, had been substituted wholly for the article of food aforesaid; further, for the reason that a substance, to wit, an invert sugar sirup artificially colored and artificially flavored, had been substituted in part for the article of food aforesaid.

Misbranding was alleged for the reason that each of the bottles packed in the cases containing the article of food as aforesaid bore a label in words and figures as follows, to wit, (Shipping case) "Orangeade—Sole Producers—The Francis Cropper Co. Chicago." (Tag tacked to top of shipping case) "For Barrett & Barrett—12 qts.—St. Paul, Minn.—From The Francis Cropper Co., 59 Michigan Street, Chicago." (On bottle) "Orangeade—Sole Producers—The Francis Cropper Co., Chicago,—Guaranteed under the Pure Food & Drugs Act, June 30, 1906." (Neck label) "Orangeade," which said labels appearing on each of said bottles containing the article of food contained a pictorial representation of an orange, and which statement, "Orangeade," upon the label borne upon each of the bottles and upon each of the cases, and the statements, designs, and devices upon the labels aforesaid were false and misleading in that the statement represented to the purchaser that the article of food was a product made from the juice of oranges, sugar, and water, without the addition of artificial color and flavor, whereas, in truth and in fact, each of the bottles did not contain the juice of oranges, sugar, and water, without the addition of artificial color or flavor, but was [contained] an invert sugar sirup artificially colored and artificially flavored. Misbranding was alleged for the further reason that said labels appearing on each of the bottles contained a pictorial representation of an orange, and which statement, "Orangeade," upon the label borne upon each of the bottles and the statements, designs, and devices upon the labels aforesaid misled and deceived the purchaser into the belief that the article of food aforesaid was a product made from the juice of oranges, sugar, and water, without the addition of artificial color and flavor, whereas, in truth and in fact, each of the bottles did not contain the juice of oranges, sugar, and water,

without the addition of artificial color and flavor, but was [contained] an invert sugar sirup artificially colored and artificially flavored. Misbranding was alleged for the further reason that said labels appearing on each of the bottles contained a pictorial representation of an orange, and which statement, "Orangeade," upon the label borne upon each of the bottles, and the statements, designs, and devices upon the labels aforesaid were false and misleading in that the labels aforesaid purported to state that the article of food contained in the bottles was orangeade, whereas, in truth and in fact, the product called orangeade contained in the bottles aforesaid was not orangeade, but was an imitation product prepared from invert sugar sirup artificially colored and artificially flavored, and was an imitation of and offered for sale under the distinctive name of another article known as orangeade.

On July 14, 1915, the defendant entered a plea of guilty to the information, and on June 30, 1915, the court imposed a fine of $100 and costs. On July 23, 1915, the defendant filed a motion for rehearing on the plea of guilty, which was allowed by the court, and the case was continued to October 15, 1915, for disposition. On the latter date the order of June 30, 1915, imposing a penalty of $100 and costs, was vacated, and a penalty of $25 and no costs was imposed.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *December 4, 1915.*

4054. Adulteration of oysters. U. S. v. C. J. Hogg. Tried to the court and a jury. Verdict of guilty. Fine, $50 and costs. (F. & D. No. 4237. I. S. No. 14026-d.)

On July 12, 1912, the United States attorney for the Eastern District of Virginia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against C. J. Hogg, Tampico, Va., alleging shipment by said defendant, in violation of the Food and Drugs Act, on November 15, 1911, from the State of Virginia into the District of Columbia, of a quantity of oysters in the shell which were adulterated.

Bacteriological examination of a sample of the product by the Bureau of Chemistry of this department showed that: 5 out of 5 oysters showed the presence of gas-producing organism in 1 cc quantities of the shell liquor; 5 out of 5 in 0.1 cc; 4 out of 5 in 0.01 cc; the composite liquor from the 5 oysters showed the presence of 180,000 organisms per cc after 4 days' incubation on plain sugar at 25° C.; 60,000 organisms at 37° C.; and gas-producing organisms in 0.01 cc; score, 410 points.

Adulteration of the product was alleged in the information for the reason that the same consisted, in whole and in part, of filthy and decomposed animal or vegetable substance.

On January 19, 1915, the case having come on for trial before the court and a jury, after the submission of evidence, the case was given to the jury and a verdict of guilty was returned, and thereupon the court imposed a fine of $50 and costs.

(This case was tried in the absence of defendant and it was later discovered that he had died some time prior to the date of the trial.)

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C. *December 4, 1915.*

4055 (Supplement to Notice of Judgment 3332). Adulteration of grain alcohol varnish. U. S. v. Oscar J. Weeks (O. J. Weeks & Co.). Decision of the Circuit Court of Appeals for the Second Circuit, affirming judgment of conviction in the District Court of the United States for the Southern District of New York. (F. & D. No. 4242. I. S. No. 12575-c.)

On January 19, 1914, Oscar J. Weeks, doing business under the firm name and style of O. J. Weeks & Co., New York, N. Y., filed his petition praying that a writ of error be allowed directed to the United States District Court for the Southern District of New York in a proceeding involving the interstate shipment by said defendant, in violation of the Food and Drugs Act, of a quantity of grain alcohol varnish which was adulterated. On the same date, an order allowing the writ of error was filed with the assignments of error. On October 16, 1914, the bill of exceptions in the case was settled, and thereafter the record was transmitted to the Circuit Court of Appeals for the Second Circuit.

On May 13, 1915, the case having come on for final hearing in said Circuit Court of Appeals before Lacombe, Ward, and Rogers, *C. J.*, the judgment of conviction in the lower court was affirmed, as will more fully appear from the following decision by the court (Lacombe, *C. J.*):

A much simpler case is here presented than that considered in action No. 1, opinion in which is filed herewith. There is but one information in a single count. Concededly defendant shipped an article of food labeled "Grain alcohol varnish"; it was shellac dissolved in alcohol and was used for a glazing on cheap candies. Shellac is a resinous material derived from a secretion caused by an insect biting the bark of certain trees in India and southern Asia. This resinous material is separated from the twigs and other refuse material by being warmed in bags. Arsenic is added to it for the purpose of brightening its natural orange color, making it, in the opinion of the trade, more desirable. All shellac imported into this country during the year in question contains this added article, defendant so concedes. The shellac is dissolved in alcohol to produce the varnish; no arsenic is added here.

The act provides (sec. 7) that an article of food is adulterated if it "contain any added poisonous or other added deleterious ingredients, which may render such article injurious to health." The amount of this arsenic which could possibly be consumed by a person eating the candy glazed with the varnish would be minute. The only question is: Was there sufficient arsenic in the varnish to make it an article which "may be injurious to health?"

Upon this point there was conflicting testimony. In accordance with the holding of the Supreme Court in U. S. *v.* Lexington Mill Co., 232 U. S. 399, the question whether the added ingredient would "reasonably have a tendency to injue health" was left to the jury. We see no reason to disturb their finding; it makes no difference whether the arsenic was added to the shellac or to the varnish, nor whether it was added by the defendant or by some one else. He testified with commendable frankness that he understood at the time that one "could not buy shellac commercially, I mean outside of a laboratory, that was arsenic free." He supposed undoubtedly that the amount consumed with varnished candy would be too minute to injure any one. Of course he could sell this varnish, with its added arsenic for use in the arts, but he admitted, with entire frankness, that he sold it to be used in glazing confectionery. We regret to have to sustain a conviction, where the defendant has been so entirely frank and honest in giving his testimony and had no reason to suppose he was likely to injure any one's health by selling his varnish for the indicated purpose; but intent so to do is not an element of the offense charged, and the evidence as to what effect the added arsenic may have was such that this question had to go to the jury for decision. Had they decided that question contrary to the contention of the Government experts we certainly could not set their decision aside, nor can we do so when they find such contention persuasive. We are not the triers of the facts.

It seems unnecessary to discuss various technical points which have been argued. We can not see that it makes any difference whether the package shipped was labeled "Grain alcohol varnish" or "White shellac varnish grain alcohol." It is proved that shellac varnish was sent by defendant to the candy manufacturer in Providence, R. I., and that what the Government experts tested was a sample from the can. We do not understand that defendant disputes the fact that he sent the can.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *December 8, 1915.*

4056. Misbranding of "A. D. S. Peroxide Talcum Antiseptic and Deodorant." U. S. v. American Druggists Syndicate. Plea of guilty. Fine, $25. (F. & D. No. 4355. I. S. No. 3106-c.)

On November 7, 1912, the United States attorney for the Eastern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the American Druggists Syndicate, a corporation, Long Island City, N. Y., alleging shipment by said company, in violation of the Food and Drugs Act, on September 2, 1910, from the State of New York into the State of Oregon, of a quantity of "A. D. S. Peroxide Talcum Antiseptic and Deodorant" which was misbranded. The product was labeled: (On box) "A. D. S. Peroxide Talcum Antiseptic and Deodorant Relieves Aching Feet and Excessive Perspiration American Druggists Syndicate. New York, U. S. A. This powder contains a peroxide. The wonderful antiseptic and germicide. It possesses the valuable properties for a healthful and sanitary toilet powder. Unexcelled as an absorbent, deodorant for excessive perspiration. Use this powder freely to soothe and allay soreness, chafing and all irritations. Price 25 cents. Guaranteed by American Druggists Syndicate Under the Food and Drugs Act, June 30, 1906. Serial No. 1214."

Examination of a sample of the product by the Bureau of Chemistry of this department showed that it contained no antiseptic properties when tested against bacillus typhosus and bacillus coli communis. The analysis of the product failed to reveal the presence of either peroxids or antiseptics.

Misbranding of the article was alleged in the information for the reason that the label on the package, box, and carton bore statements, designs, and devices regarding said article and the ingredients and substances contained therein which were false and misleading in that the statements on the label thereof, to wit, "Peroxide" and "This powder contains a peroxide," misled and deceived the purchaser into the belief that said article and drug consisted wholly or in part of peroxid, whereas, in truth and in fact, the said article and drug did not contain peroxid. Misbranding was alleged for the further reason that the label on the package, box, and carton bore statements, designs, and devices regarding said article and the ingredients and substances contained therein which were false and misleading in that the statement "The wonderful antiseptic and germicide" was false and misleading in that it misled the purchaser into the belief that said article and drug was antiseptic, whereas, in truth and in fact, the said article and drug was not antiseptic.

On June 30, 1915, the defendant company withdrew its plea of not guilty theretofore entered and entered a plea of guilty to the information, and on July 8, 1915, the court imposed a fine of $25.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *December 4, 1915.*

4057. Misbranding of rock candy and maple sirup. U. S. v. Rigney & Co., a corporation. Plea of guilty. Fine, $10. (F. & D. No. 4491. I. S. Nos. 17340-d, 17341-d, 17345-d, 17346-d.)

On May 20, 1914, the United States attorney for the Eastern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Rigney & Co., a corporation, Brooklyn, N. Y., alleging the shipment by said company, in violation of the Food and Drugs Act, on or about August 23, 1911, from the State of New York into the State of Illinois, of a quantity of a product called "Park Brand Rock Candy and Maple Syrup" which was misbranded. A portion of the product was labeled: "Park Brand Rock Candy and Maple Syrup 17. 24 quarts. Com." The remainder of the product was labeled: "Park Brand Rock Candy and Maple Syrup 19. Rigney and Company, 12 half gallons. Com."

Examination of samples of the product by the Bureau of Chemistry of this department showed that each can in the shipping cases marked "24 quarts Com." contained less than a quart, and each can in the shipping cases marked "12 half gallons Com." contained less than one-half gallon.

Misbranding of the product was alleged in the information for the reason that the label on each of the packages and cans bore statements, designs, and devices regarding the article which were false and misleading; that is to say, the labels on said packages and cans bore the statement "24 quarts" or "12 half gallons," as the case might be, which said statements misled and deceived the purchaser into the belief that the packages and cans contained 24 quarts or 12 half gallons of the product, whereas, in truth and in fact, they did not contain 24 quarts or 12 half gallons of the product, but contained much less than 24 quarts or 12 half gallons thereof. Misbranding was alleged for the further reason that the product was in package form and the contents were stated in terms of measure upon the labels on the outside of the packages and they were not correctly stated on the outside of the packages, that is to say, the said food and food product was in package form, and the labels on the outside of the packages containing the said food and food product bore the statement "24 quarts" or "12 half gallons," whereas, in truth and in fact, the said packages and cans did not contain 24 quarts or 12 half gallons, but contained much less than 24 quarts or 12 half gallons, as the case might be.

Thereafter, a plea of not guilty to the information having been entered, the defendant company filed its motion to quash the information, and on January 27, 1915, the motion to quash was denied, as will more fully appear from the following decision by the court (Chatfield, *D. J.*):

(1) This information was filed against the defendant corporation for shipping by interstate commerce a quantity of sirup in a package labeled "24 quarts com.," and also another quantity of sirup in a package bearing a label "12 half gallons com."

The shipments were alleged to have been an offense against the provisions of the Food and Drugs Act of June 30, 1906 (34 Stat., 771), as contained in section 8, which prohibits a false or misleading statement upon a package or label regarding the article contained therein, and under subdivision 3 of the portion of that section relating particularly to food, which provides (as amended Mar. 3, 1913): "Third. If in package form, the quantity of the contents be not plainly and conspicuously marked on the outside of the package in terms of weight, measure, or numerical count," etc.

The defendants subsequently withdrew their plea and sought to raise a question of fact as to the meaning of their label, and to contend that, under the law, this meaning was neither misleading to the public or their customers, nor false in statement when considered from the point of view of those who should be held responsible for knowledge as to ordinary trade practices.

The defendants therefore interposed a motion to dismiss or quash the indictment, based upon affidavits showing that the packages in question contained, in the one case, bottles substantially of the size in exterior dimensions of the ordinary quart bottle, and, in the other case, cans, again in general external size and appearance of a half-gallon or 2-quart size, but the *labels* upon the bottles and cans themselves contained no statement of quantity. The price for which the articles were sold depended

(of course) upon the wholesale price charged therefor, as the ordinary downward limit under competition.

These bottles and cans were, as shown by the affidavits, packed in wooden boxes, upon which a stencil was used to mark in black letters the sirup label and also the words complained of in the information, in one case "24 quarts 17 com.," and in the other case "12 half gallons 19 com." The affidavits also show, and these matters are not disputed by the Government, that the shipments were to wholesalers, and not to retail customers, and were all made upon prices quoted for the quantity shown in the circulars, and were billed to the wholesalers by the same description, as, for instance, "No. 1 com'l half pts. (7 oz.)" "No. 4 square qts. (5 to gal.)" "No. 19 half gallons commercial measure 1 dozen to case gross wt. 70 lbs." "No. 21 gallons, commercial measure, ½ dozen to case 63 lbs." "No. 23 5 gallons, cased full measure gross weight 69 lbs."

The only points contested by the Government upon this motion are the meaning of the words and the allegation that the trade understood the meaning of the words "quarts," "one-half gallon," etc., when used under what is alleged by the defendants to be a well-known practice of selling packages containing smaller quantities, but labeled in a so-called descriptive way to state approximately the quantity in liquid or solid measure nearest the general size of the package. The Government produced certain affidavits in which wholesalers deny that such meaning of the words "commercial quart," or "commercial half gallon," was well known and commonly used in this descriptive sense in the trade.

It is unnecessary to consider whether the practice of attracting trade by apparent intimation of cheap prices, but in reality by a saving of the actual quantity sold, and by holding out to the public or advertising misleading statements, by which the customer may be deceived, but which the wholesaler and retailer, or those initiated into the trade secrets, understand are false, should be treated as reprehensible, nor need we consider whether Congress has the power to pass a statute prohibiting such practices in interstate commerce when the injury to the public demands. The mere queries answer themselves.

In the present case we have only to do with the question whether the labels (interpreted from the price lists or from custom, by the persons to whom the goods were shipped) were false and misleading in their statements of the quantity contained in the package, and whether the contents were plainly and correctly stated on the outside thereof.

If the label used would allow the deception of the public and unfair methods of advertising, through the complicity of the retail dealer, it becomes evident that this is one of the evils which the statute was intended to prevent, and that Congress did not pass this law for the protection of the retailer alone.

There is nothing before the court, and no authority in dictionary, textbook, or statute, to vindicate or uphold the establishment of a different system of liquid and weight measures than those sanctioned by law and general use, even though a lax and vicious reduction in quantity, as a matter of trade practice, is frequently found when no legal prohibition exists.

(2) It has appeared upon the argument of the motion that the defendant ceased the use of these labels and has made its measures and literature correspond to the requirements of the department, under the Pure Food Law, since its attention has been called thereto, and now disclaims any desire to be a party to violations of the statute or acts tending to deceive the public. This is what would be expected from any person or house in reputable business, and goes only to the question of mitigation, for an act which at the time, even though not appreciated, was a violation of the Pure Food Law.

The motion to dismiss or quash will be denied, and the defendants will be directed to plead over.

On March 5, 1915, the defendant company entered a plea of nolo contendere to the information, which was refused by the United States attorney, at which time the plea was changed to guilty, and the defendant company was fined $10.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *December 4, 1915.*

4058. Adulteration and misbranding of vinegar. U. S. * * * v. 20 Barrels of Vinegar * * *. Default decree of condemnation and forfeiture. Product ordered sold. (F. & D. No. 4571. I. S. No. 4111–e. S. No. 1524.)

On September 27, 1912, the United States attorney for the Southern District of West Virginia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 20 barrels of vinegar remaining unsold in the original unbroken packages at Bluefield, W. Va., alleging that the product had been shipped and transported from the State of Virginia into the State of West Virginia, and charging adulteration and misbranding in violation of the Food and Drugs Act. The barrels were labeled: "Picklers Pride, Blend of Apple and Distilled Vinegar, distributed by I. S. Fine Corp., Roanoke, Va."

Adulteration of the article was alleged in the libel for the reason that distilled vinegar had been substituted in whole or in part for apple vinegar, thereby reducing, lowering, and injuriously affecting its quality and strength.

Misbranding was alleged for the reason that none of the barrels contained "Blend of Apple and Distilled Vinegar," as they purported to contain, as evidenced by the markings on said barrels, but contained distilled vinegar with a trace of apple vinegar insufficient in quantity to warrant the use of the term "Blend [of] Apple and Distilled Vinegar," and the labeling of said barrels as containing blend of apple and distilled vinegar was misleading and false so as to deceive and mislead the purchaser and was a misbranding within the meaning of said act.

On June 26, 1915, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered nunc pro tunc, as of the date of April 10, 1915, and it was ordered by the court that the product should be sold by the United States marshal.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *December 4, 1915.*

4059. Adulteration and misbranding of wine. U. S. * * * v. 3 Barrels * * * 2 Barrels * * * and 2 Barrels * * * of so-called Scuppernong Wine. Default decrees of condemnation and forfeiture. Product ordered sold. (F. & D. Nos. 5306, 5307, 5308. I. S. Nos. 802-h, 804-h, 807-h. S. No. 1294.)

On August 14, 1913, the United States attorney for the Northern District of Texas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district libels for the seizure and condemnation of 3 barrels containing 216 bottles, 2 barrels containing 240 bottles, and 2 barrels containing 144 bottles of so-called scuppernong wine, remaining unsold in the original unbroken packages at Dallas, Tex., alleging that the 3 barrels had been shipped June 3, 1913, 2 barrels, December 20, 1912, and the other 2 barrels, June 6, 1913, and transported from the State of Ohio into the State of Texas, and charging adulteration and misbranding in violation of the Food and Drugs Act. Two of the 3 barrels first referred to were labeled: "Glass with care wine 72 bottles." The other barrel was labeled: "Glass with care. Special Scuppernong Bouquet." The 2 barrels containing 240 bottles of wine were labeled: "Wine glass with care 120 bottles." The 2 barrels containing 144 bottles of wine were labeled: "Glass with care wine 72 bottles." The bottles containing the product were variously labeled in part: "Scuppernong Bouquet wine Delaware and Scuppernong Blend Ameliorated with Sugar Solution," or "Scuppernong Bouquet special wine Belle of the Valley Delaware and Scuppernong Blend Ameliorated with sugar solution," or "Scuppernong Bouquet Delaware and Scuppernong Blend Ameliorated with sugar solution wine."

The allegations in the libels were to the effect that the article was adulterated for the reason that a substance, to wit, an imitation product made in whole or in part from another wine or wines or base wine sweetened and mixed in imitation of scuppernong wine, had been mixed and packed with said article so as to reduce, or lower, or injuriously affect its quality or strength, and for the further reason that a substance, to wit, said imitation product, had been substituted wholly or in part for scuppernong wine. The allegations in the libels as to misbranding were to the effect that the labels of the article bore the aforesaid statements regarding the article or the ingredients or substances contained therein, which said statements were false and misleading in that they conveyed the impression that the article was scuppernong wine, whereas, in truth and in fact, it was not scuppernong wine, but was a product made in whole or in part from another wine or wines or base wine sweetened and mixed in imitation of scuppernong wine; and for the further reason that said statements would deceive or mislead the purchaser into believing that the article was scuppernong wine, whereas, in truth and in fact, it was not but was an imitation thereof.

On March 5, 1914, no claimant having appeared for the property, judgments of condemnation and forfeiture were entered, and it was ordered by the court that said property should be sold by the United States marshal, according to the statutes and practice in admiralty proceedings.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *December 4, 1915.*

4066. Adulteration and misbranding of peach extract. U. S. v. National Fruit Products Co. Plea of guilty. Dismissed on payment of costs. (F. & D. No. 5365. I. S. No. 36472-c.)

On September 28, 1914, the United States attorney for the Western District of Tennessee, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the National Fruit Products Co., a corporation, Memphis, Tenn., alleging shipment by said company, in violation of the Food and Drugs Act, on or about July 2, 1912, from the State of Tennessee into the State of Georgia, of a quantity of peach extract which was adulterated and misbranded. The product was labeled: "Peach Extract 1 oz. to keg."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

Specific gravity at 15.6° C.	0.9415
Free volatile acids, as acetic (grams per 100 cc.)	0.20
Esters, as ethyl acetate (per cent by weight)	0.93
Solids (per cent by weight)	0.50
Alcohol (per cent by volume)	45.06

Methyl alcohol: Absent.

Color: Very slight, vegetable.

Organoleptic test: Odor and taste unlike peach.

The product consists essentially of a dilute alcoholic solution of artificial esters, and contains little or no true fruit products.

Adulteration of the product was alleged in the information for the reason that an imitation extract of peach, prepared from a dilute solution of alcohol and artificial esters, had been mixed and packed with said article so as to reduce and lower and injuriously affect its quality and strength, and, further, for the reason that an imitation extract of peach, prepared from a dilute solution of alcohol and artificial esters, had been substituted wholly or in part therefor.

Misbranding was alleged for the reason that the statement "Peach Extract," borne on the label thereof, was false and misleading, in that it conveyed the impression that the product was genuine peach extract made from the fruit, whereas, in truth and in fact, it was not a genuine peach extract made from the fruit, but was an imitation extract of peach, prepared from a dilute solution of alcohol and artificial esters. Misbranding was alleged for the further reason that the article was labeled and branded so as to deceive and mislead the purchaser, being labeled and branded "Peach Extract", thereby conveying the impression that it was a genuine peach extract prepared from the fruit, whereas, in truth and in fact, it was not a genuine peach extract prepared from the fruit, but was an imitation extract of peach prepared from a dilute solution of alcohol and artificial esters.

On May 22, 1915, the defendant company entered a plea of guilty to the information, and the court ordered the same dismissed upon payment of the costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *November 17, 1915.*

4061. Alleged misbranding of eggs. U. S. v. Schallinger Produce Co. Information quashed. Judgment of dismissal. (F. & D. No. 5401. I. S. No. 437-e.)

On May 28, 1914, the United States attorney for the Eastern District of Washington, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Schallinger Produce Co., a corporation, Spokane, Wash., alleging shipment by said company, in violation of the Food and Drugs Act, on or about November 22, 1912, from the State of Washington into the State of Idaho, of a quantity of eggs charged to have been misbranded. The product was labeled: "One Dozen Premium Eggs Strictly New Laid Absolutely Reliable Notice to Consumers *We Guarantee the Eggs* in this Carton to be carefully selected for *Freshness, Size and Cleanliness. The Seal* on outside is placed there *For Your Protection.* Be sure to see that it is not broken. *Watch the Date.* These eggs are intended to reach the consumers within one week from date shown on seal, and during that time we gladly replace any that are not as represented. Schallinger Produce Co. Spokane. Always insist on getting Premium Eggs The Brand that Never Disappoints. Premium Eggs. Guaranteed Only When Seal is not Broken Watch the Date Put Up. Nov. 22, 1912." (Premium slip) "Save this coupon—one in every dozen of Premium Eggs Realizing the demand for really dependable eggs, we have met the issue and recommend to all lovers of good eggs our Premium Brand. Premium Eggs are always the best Eggs obtainable, and we get them from our Farmer patrons, who bring us their cream. These Eggs are brought in fresh every day and the date on the carton shows when they were packed, and is there for your protection. Recommend Premium Eggs to your friends. They will be pleased to know about them. Schallinger Produce Co. R. R. and Cedar St., Spokane."

Examination of a sample of the product by the Bureau of Chemistry of this department showed that in 1 dozen eggs examined there was 1, or 8⅓ per cent, of the quality of Fresh Eastern, the remainder of the dozen, namely, 11 eggs, or 91⅔ per cent, were found to be stale or storage eggs. Upon opening a hot hard-boiled egg, also in poaching one of the eggs, a stale odor was noticeable in each case. The whites of the uncooked eggs were rather thin and watery.

Misbranding of the product was alleged in the information for the reason that the label thereof bore the following statements, to wit, "Premium Eggs, Strictly New Laid Absolutely Reliable," and "*We Guarantee the Eggs* in this Carton to be carefully selected for *Freshness, Size and Cleanliness*," which said statements were false and misleading in that they purported and represented said article of food to be fresh eggs, whereas in fact the same were not fresh eggs, but were in fact stale eggs. Misbranding was alleged for the further reason that the article was labeled and branded so as to deceive and mislead the purchaser into the belief that the contents of the cartons were fresh, newly laid eggs, whereas in fact said contents were not fresh, newly laid eggs, but were in fact stale eggs.

On June 17, 1914, the defendant company filed its motion to quash the information, and on September 30, 1914, said motion was argued and submitted to the court. On October 5, 1914, the motion to quash the information was sustained, as will more fully appear from the following decision by the court (Rudkin, *D. J.*):

Section 2 of the act of Congress of June 30, 1906, declares:

"That the introduction into any State or Territory or the District of Columbia from any other State or Territory or the District of Columbia, or from any foreign country, or shipment to any foreign country of any article of food or drugs which is adulterated or misbranded, within the meaning of this act, is hereby prohibited; and any person who shall ship or deliver for shipment from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, or to a foreign country, or who shall receive in any State or Territory or the District of Columbia from any other State or Territory or the District of Columbia, or foreign country, and having so received, shall deliver, in original unbroken packages, for pay or otherwise, or offer to deliver to any other person, any such article so adul-

terated or misbranded within the meaning of this act, or any person who shall sell or offer for sale in the District of Columbia or the Territories of the United States any such adulterated or misbranded foods or drugs, or export or offer to export the same to any foreign country, shall be guilty of a misdemeanor, and for such offense be fined not exceeding two hundred dollars for the first offense, and upon conviction for each subsequent offense not exceeding three hundred dollars or be imprisoned not exceeding one year, or both, in the discretion of the court. * * *."

Section 3 declares:

"That the Secretary of the Treasury, the Secretary of Agriculture, and the Secretary of Commerce and Labor shall make uniform rules and regulations for carrying out the provisions of this act, including the collection and examination of specimens of foods and drugs manufactured or offered for sale in the District of Columbia, or in any Territory of the United States, or which shall be offered for sale in unbroken packages in any State other than that in which they shall have been respectively manufactured or produced, or which shall be received from any foreign country, or intended for shipment to any foreign country, or which may be submitted for examination by the chief health, food, or drug officer of any State, Territory, or the District of Columbia, or at any domestic or foreign port through which such product is offered for interstate commerce, or for export or import between the United States and any foreign port or country."

Section 4 declares:

"That the examination of specimens of foods and drugs shall be made in the Bureau of Chemistry of the Department of Agriculture, or under the direction and supervision of such bureau, for the purpose of determining from such examinations whether such articles are adulterated or misbranded within the meaning of this Act; and if it shall appear from any such examination that any of such specimens is adulterated or misbranded within the meaning of this act, the Secretary of Agriculture shall cause notice thereof to be given to the party from whom such sample was obtained. Any party so notified shall be given an opportunity to be heard, under such rules and regulations as may be prescribed as aforesaid, and if it appears that any of the provisions of this act has been violated by such party, then the Secretary of Agriculture shall at once certify the facts to the proper United States District Attorney, with a copy of the results of the analysis or the examination of such article duly authenticated by the analyst or officer making such examination, under the oath of such officer. After judgment of the court, notice shall be given by publication in such manner as may be prescribed by the rules and regulations aforesaid."

Section 5 declares:

"That it shall be the duty of each district attorney to whom the Secretary of Agriculture shall report any violation of this act, or to whom any health or food or drug officer or agent of any State, Territory, or the District of Columbia shall present satisfactory evidence of any such violation, to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States, without delay, for the enforcement of the penalties as in such case herein provided."

Section 12 declares, among other things, that the word "person" as used in the act shall be construed to import both the plural and the singular, as the case demands, and shall include corporations, companies, societies, and associations.

The information filed in this case by the United States attorney under the foregoing provisions recites that the information is filed with leave of court first had and obtained, and "gives the court here to understand and be informed, upon the oath of Abraham L. Knisely and Duncan A. McIntyre, of Fred Nelson, and of Daniel N. Walsh, whose affidavits are hereto attached and made a part hereof as follows, to wit: * * *."

The information then charges that the defendant, a corporation organized under the laws of the State of Washington, with its principal office and place of business in the city of Spokane, did, on or about the 22d day of November, 1912, contrary to the provisions of the foregoing act, ship and deliver for shipment in interstate commerce from the city of Spokane, State of Washington, to the city of Coeur d'Alene, in the State of Idaho, consigned to Nelson Bros. at Coeur d'Alene, in the State of Idaho, certain cases containing eggs, and that the article of food so shipped was misbranded.

To the information are attached the four affidavits therein referred to. The first two were taken before a notary public in the State of Oregon; the third before a notary public in the State of Idaho, and last, before the clerk of the District Court of the United States for the Northern District of West Virginia. The defendant has appeared specially and moved to quash the information on the grounds, first, that the affidavits thereto attached fail to show probable cause for the prosecution and are insufficient to support the information, and second, because the information does not charge a crime under the act of Congress in question.

At common law an information might be filed by the Attorney General simply on his oath of office and without verification; and it has generally been held in this country, following the common-law rule, that verification of an information by the prosecuting officer is unnecessary unless required by some statutory or constitutional provision. There is no law of the United States requiring verification of informations by the prosecuting officer, but a verification of some kind is no doubt indispensable under the fourth amendment to the Constitution where a warrant of arrest is sought or applied for. See Weeks *v.* United States, decided by the Circuit Court of Appeals for the Second Circuit June 18, 1914, where this question is fully considered. Inasmuch as this prosecution is against a corporation where no warrant of arrest is applied for or can be issued, I am of opinion that an information filed by the United States attorney under the sanction of his official oath, and without verification, would be sufficient. But the information under consideration was not so filed, for it expressly states upon its face that it is upon the oath of the several parties named in the annexed affidavits. Unless I am at liberty to consider these affidavits, therefore, the information has no sanction whatever. As already stated, the three principal affidavits were taken before notaries public in other States, and the fourth, standing alone, is of no avail. The question, therefore, arises, Can these affidavits, taken before notaries, be considered by the court? I am of opinion that they can not.

In United States *v.* Curtis (107 U. S., 671, 673), the court said:

"So that the underlying question is whether the notary public, whose commission is from the State, was, at the respective dates of the oaths taken by Curtis, authorized by the laws of the United States to administer such oaths.

"This question we are constrained to answer in the negative. We are not aware of any act of Congress which gave such authority to notaries public in the different States at the several dates given in the indictment. The Assistant Attorney General insists that such authority may be found in section 1778 of the Revised Statutes, which declares: 'In all cases in which, under the laws of the United States, oaths or acknowledgments may now be taken or made before any justice of the peace of any State or Territory, or in the District of Columbia, they may hereafter be also taken or made by or before any notary public duly appointed in any State, district, or Territory, or any of the commissioners of the circuit courts, and, when certified under the hand and official seal of such notary or commissioner shall have the same force and effect as if taken or made by or before such justice of the peace.'

"The authority of the notary to administer these oaths to Curtis can not be derived from that section, unless, at the dates in question, they could, under the laws of the United States, have been taken before justices of the peace in Missouri. But the latter officers have no such authority by any Federal statute to which our attention has been called, or which we are able to find. Section 1778, so far as notaries public are concerned, embodies the substance of similar provisions in the acts of September 16, 1850, chapter 52, and July 29, 1854, chapter 159, and section 20 of the act of June 22, 1874, chapter 390. But nothing in these acts, even if they remained in force after the adoption of the Revised Statutes, supports the authority exercised by the notary public who administered these oaths to defendant.

"Counsel for the United States further insists that a proper construction of section 1778 will authorize a notary public in *any* State to administer oaths to officers of national banking associations, when making reports to the Comptroller of the Currency, if justices of the peace may lawfully do so in this District. But in our judgment no such interpretation of that provision is admissible. What Congress intended by that section was to give notaries public in their respective States the same authority, in the administration of oaths, as is given, under the laws of the United States, to justices of the peace in the same States; and to notaries public in this District the same authority, in administering oaths, which, under the laws of the United States, might be exercised by justices of the peace in this District. We have seen, however, that to justices of the peace, in the several States, such authority had not been given by any provision in the Revised Statutes or by any act of Congress prior to their adoption.

"Nor can any support for the indictment be derived from the act of August 15, 1876, chapter 304, which declares 'that notaries public of the several States, Territories, and the District of Columbia, be, and they are hereby, authorized to take depositions, and do all other acts in relation to taking testimony to be used in the courts of the United States, take acknowledgments and affidavits in the same manner and with the same effect as commissioners of the United States Circuit Court may now lawfully take or do.'

"The power of commissioners of the Circuit Court did not, at the passage of that act, extend to the taking of oaths to reports by officers of national banks. They could take affidavits when required, or allowed in any civil cause in a circuit or

district court (Rev. Stat., sec. 945; act of Feb. 20, 1812, ch. 25; act of Mar. 1, 1817, ch. 30); or administer oaths where, in the same State, under the laws of the United States, oaths, in like cases, could be administered by justices of the peace (Rev. Stat., sec. 1778); or they could take evidence, affidavits, and proof of debts in proceedings in bankruptcy (Rev. Stat., secs. 5003, 5076; act of Mar. 2, 1867, ch. 176; sec. 3 of the act of July 27, 1868, ch. 258; sec. 20 of the act of June 22, 1874, ch. 390). But the authority of commissioners did not extend to such oaths as were administered to Curtis."

It follows from this decision that a notary public has no authority under the laws of the United States to administer any oaths in connection with criminal prosecutions. The United States attorney frankly conceded this on the argument, but contended that inasmuch as this is a prosecution against a corporation, commenced by summons, it must be deemed to be a civil action. To this proposition I can not yield assent. All persons, whether natural or artificial, stand upon an equal footing before the criminal laws of the country. True a corporation, by reason of its inherent nature, can not commit certain crimes, and may not be arrested or imprisoned; but a proceeding against it for the violation of a criminal statute is, and must be, in its very nature, a criminal proceeding with all the incidents of such a proceeding until the legislature has declared otherwise. Believing, therefore, that the information in itself is insufficient because not under the sanction of the official oath of the United States district attorney, and that I may not consider the affidavits of notaries thereto attached, the motion to quash must be granted, and it is so ordered.

Thereafter, on October 7, 1914, a judgment was entered dismissing the case in accordance with the foregoing decision.

C. F. MARVIN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *November 17, 1915.*

4062. Misbranding of stock feed. U. S. v. James Emison et al. (J. & S. Emison & Co.). Plea of guilty. Fine, $200 and costs. (F. & D. No. 5415. I. S. No. 15064-d.)

At the November, 1914, term of the District Court of the United States for the District of Indiana, the grand jurors of the United States within the aforesaid district, acting upon a report by the Secretary of Agriculture, upon presentment by the United States attorney for said district, returned an indictment against James Emison and Scott Emison, composing members of J. & S. Emison & Co., a copartnership, doing business under that name and under the name of Baltic Mills, Vincennes, Ind., charging shipment by said defendants, in violation of the Food and Drugs Act, on February 16, 1912, from the State of Indiana into the State of Ohio, of a quantity of stock feed which was misbranded. The product was labeled: (On bags) "Baltic Mills 100 Lbs. A M O Syrup Feed Manufactured by J. & S. Emison & Co., Vincennes, Ind." (On tags) "100 lbs. J. & S. Emison & Co., Baltic Mills of Vincennes, Ind., guarantees this A M O Syrup Feed to contain not less than Crude protein 12%; crude fat 5%; fiber 12%; carbo-hydrates (starch and sugar) 65%; and compounded from the following ingredients: corn, oats, alfalfa meal, grain screenings, and molasses."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

Moisture (per cent)	21.34
Ether extract (per cent)	2.40
Protein (per cent)	8.63
Crude fiber (per cent)	8.04

Microscopical examination showed that the product consisted of corn, oats, alfalfa, a trace of weed seeds and chaff, and a considerable amount of barley tissue (about 5 per cent); the barley had been malted.

Misbranding of the article was charged in the indictment for the reason that the statements "Crude protein 12%" and "crude fat 5%," borne on said bags and packages in which the product was contained, were false and misleading because said product did not contain 12 per cent of crude protein, but contained a smaller per cent of said substance; and because said product did not contain 5 per cent of crude fat, but contained a smaller per cent of crude fat. Misbranding was charged for the further reason that the statement, "compounded from the following ingredients: corn, oats, alfalfa meal, grain screenings and molasses," borne on each of the packages as aforesaid, was false and misleading in that said product contained an ingredient other than those enumerated in said statement, to wit, malted barley, which was not stated in the brand and label aforesaid as an ingredient of said product, and the presence of said malted barley in said substance was not stated in the label and brand on each of the said packages. Misbranding was charged for the further reason that the article was labeled and branded as aforesaid, so as to deceive and mislead the purchaser thereof into the belief that it contained 12 per cent of crude protein and 5 per cent of crude fat, whereas, in truth and in fact, said product did not contain 12 per cent of crude protein, but contained a less amount of said ingredient, and in that said product did not contain 5 per cent of crude fat, but contained a less amount of said ingredient. Misbranding was charged for the further reason that the article was labeled and branded as aforesaid so as to deceive and mislead the purchaser into believing that it contained corn, oats, alfalfa meal, grain screenings and molasses, and no other ingredients, whereas, in truth and in fact, it contained another ingredient, namely, malted barley, the presence of which said last-named ingredient was not declared on the label of said product on each bag and package containing said product as aforesaid.

On February 25, 1915, the defendants entered pleas of guilty to the indictment, and the court imposed a fine of $100 upon each defendant, making an aggregate fine of $200 with costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *November 17, 1915.*

4063. Alleged misbranding of "Piney Woods Brand Georgia Cane Syrup." U. S. v. the South Georgia Syrup Co. Tried to the court and a jury. Verdict of not guilty. (F. & D. No. 5473. I. S. No. 6025-e.)

On December 15, 1914, the United States attorney for the Southern District of Georgia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the South Georgia Syrup Co., a corporation, Cairo, Ga., alleging shipment by said company, in violation of the Food and Drugs Act, on or about January 10, 1913, from the State of Georgia into the State of Florida, of 1 case containing 29 cans of "Piney Woods Brand Georgia Cane Syrup," which it was charged in the information was misbranded. The product was labeled: (Principal label) "Piney Woods Brand Georgia Cane Syrup 'De Syrup Dat Takes De Cake,' Canned where the cane grows, South Georgia Syrup Co., Valdosta, Ga., U. S. A." (Reverse label) "Piney Woods Brand Georgia Cane Syrup. These goods are made from the pure juice of Georgia cane and nothing else, contain all the original substance of the cane plant. Made in the old-fashioned way in open kettles and evaporators without the use of lime, sulphur, acid or any other foreign substance. Strictly a pure farm made sugar cane syrup, free from mixtures or adulteration of any kind. Guaranteed to meet all pure food requirements whether foreign, national, state, or municipal. Packed while fresh during the grinding season in sealed cans and will retain its freshness and delicacy of flavor indefinitely till the can is opened then it should be kept in a cool place. We Guarantee this Package to Contain a High Grade 100% Pure Georgia Cane Syrup Every can provided with 'Taylor's Success Cap' the handiest cap for housekeepers. To open can, lift off top cap and cut hole in under cap South Georgia Syrup Co. Valdosta, Ga., U. S. A." In addition to the foregoing labels, 7 of the aforesaid cans were labeled, marked, and branded with the following statement, "Average net weight not less than 27.112 ounces," and 22 of the cans with the following statement, "Contents 1 lb. 9 oz. or over."

Examination of samples of the product by the Bureau of Chemistry of this department showed the following results:

Can No.—	Net weight.		Shortage.	Excess.
Cans labeled 27.112 ounces:	*Pounds.*	*Ounces.*	*Per cent.*	*Per cent.*
1	.....	26.07	3.84	.....
2	.....	23.77	12.33	.....
3	.....	26.07	3.84	.....
Average	.....	25.303	6.67	.....
Cans labeled 1 pound 9 ounces or over:				
1	1	8.43	2.29	.....
2	1	7.01	7.94	.....
3	1	10.58	.....	6.30
Average	1	8.67	1.32	.....

Misbranding of the article was alleged in the information for the reason that each of the 7 cans thereof, hereinbefore described, bore the following statement, to wit, "Average net weight not less than 27.112 ounces," which said statement was false and misleading in that the average weight of the contents of said 7 cans was not 27.112 ounces, as represented, but was in fact a less number of ounces, to wit, 25.3 ounces. Misbranding was alleged for the further reason that each of the 22 cans thereof bore the following statement, "Contents 1 lb. 9 oz. or over," which said statement was false and misleading in that the average weight of the contents of said 22 cans was not 1 pound 9 ounces or over, as represented, but was in fact less than said amount, to wit, 1 pound 8.67 ounces. Misbranding was alleged for the further reason that the article was labeled and branded so as to deceive and mislead the purchaser in the

following particulars, to wit, 7 cans thereof purported and were represented to contain 27.112 ounces of sirup, whereas, in fact, the cans so labeled contained a less amount of sirup, to wit, an average of 25.3 ounces; 22 cans thereof purported and were represented to contain 1 pound 9 ounces or over of sirup, whereas in fact the same contained a less amount of sirup, to wit, 1 pound 8.67 ounces.

On June 18, 1915, the case having come on for trial before the court and a jury, after the submission of evidence and arguments by counsel, the court gave its charge to the jury, and, after due deliberation, the jury returned its verdict of not guilty.

C. F. MARVIN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *November 17, 1915.*

4064. Misbranding of "Piney Woods Brand Georgia Cane Syrup." U. S. v. South Georgia Syrup Co. Tried to the court and a jury. Verdict of guilty. Fine, $25 and costs. (F. & D. No. 5474. I. S. No. 6038-e.)

On December 15, 1914, the United States attorney for the Southern District of Georgia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the South Georgia Syrup Co., a corporation, Cairo, Ga., alleging shipment by said company, in violation of the Food and Drugs Act, on or about December 21, 1912, from the State of Georgia into the State of Florida, of a quantity of "Piney Woods Brand Georgia Cane Syrup" which was misbranded. The product was labeled: (Principal label) "Piney Woods Brand Georgia Cane Syrup 'De Syrup Dat Takes De Cake' Canned where the cane grows South Georgia Syrup Co. Valdosta, Ga., U. S. A." (Reverse label) "Piney Woods Brand Georgia Cane Syrup These goods are made from the pure juice of the Georgia cane and nothing else, contain all the original substance of the cane plant. Made in the old-fashioned way in open kettles and evaporators without the use of lime, sulphur, acid or any other foreign substance. Strictly a pure farm made sugar cane syrup, free from mixtures or adulteration of any kind. Guaranteed to meet all pure food requirements whether foreign, national, state or municipal. Packed while fresh during the grinding season in sealed cans and will retain its freshness and delicacy of flavor indefinitely till the can is opened then it should be kept in a cool place. We Guarantee this Package to Contain a High Grade 100% Pure Georgia Cane Syrup Every can provided with 'Taylor's Success Cap' the handiest cap for housekeepers. To open can lift off top cap and cut hole in under cap. South Georgia Syrup Co. Valdosta, Ga., U. S. A." (On sides) "Average net wt. not less than 27.112 ozs. SGSCo."

Examination of samples of the product by the Bureau of Chemistry of this department showed the following results:

Can No.—	Average net weight.	Shortage.	Excess.	Can No.—	Average net weight.	Shortage.	Excess.
	Ounces.	*Per cent.*	*Per cent.*		*Ounces.*	*Per cent.*	*Per cent.*
1	25.40	6.32	.....	8	26.36	2.77	.....
2	24.20	10.74	.....	9	27.25	.....	0.51
3	26.30	2.99	.....	10	25.71	5.17	.....
4	24.06	11.26	.....	11	23.10	14.80	.....
5	25.20	7.05	.....	12	26.76	1.23	.....
6	24.06	11.26	.....				
7	27.26	.....	0.55	Average	25.47	6.06	.....

Misbranding of the article was alleged in the information for the reason that each of the 30 cans comprising the shipment bore the following statement, to wit, "Average net wt. not less than 27.112 ozs.," which said statement was false and misleading in that each of said 30 cans did not contain 27.112 ounces of sirup as represented, but in fact contained a less amount of sirup, to wit, 25.47 ounces. Misbranding was alleged for the further reason that the product was labeled and branded so as to deceive and mislead the purchaser in the following particulars, to wit, 30 cans thereof purported and were represented to contain 27.112 ounces of sirup, whereas in fact the same contained a less amount of sirup, to wit, 25.47 ounces.

On June 18, 1915, the case having come on for trial before the court and a jury, after submission of evidence and arguments by counsel, the court delivered its charge to the jury, and thereafter the jury returned a verdict of guilty, and the court imposed a fine of $25 and costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *November 17, 1915.*

4065. Adulteration of milk. U. S. v. E. Herbert Garland. Plea of guilty. Fine, $25. (F. & D. No. 5548. I. S. Nos. 20301-h, 20302-h, 20303-h.)

On April 13, 1915, the United States attorney for the District of Vermont, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against E. Herbert Garland, Lunenburg, Vt., alleging shipment by said defendant, in violation of the Food and Drugs Act, on or about May 6, 1914, from the State of Vermont into the State of New Hampshire, of a quantity of milk which was adulterated.

Analyses of samples of the product by the Bureau of Chemistry of this department showed the following results:

	Sample 1.	Sample 2.	Sample 3.
Specific gravity	1.0265	1.0268	1.0277
Fat (per cent)	4.27	2.92	3.45
Water (per cent)	88.69	90.89	89.28
Total solids (per cent)	11.31	9.11	10.72
Solids not fat (per cent)	7.04	6.19	7.27
Refractive index of serum at 20° C.	37.5	38.3	36.82
Specific gravity of serum at 15.5° C.	1.0243	1.0234	1.0248
Ash (per cent)	.59	.584	.60
Nitrates in serum	None.		

The results indicated that the samples contained a considerable amount of added water.

Adulteration of the article was alleged in the information for the reason that water had been mixed and packed with said article so as to reduce, lower, and injuriously affect its quality and strength, and, further, for the reason that water had been substituted in part for pure milk, which the said article purported to be.

On May 20, 1915, the defendant entered a plea of guilty to the information, and the court imposed a fine of $25.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *November 17, 1915.*

4066. Adulteration of catsup. U. S. * * * v. 8 Cases of Catsup. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 5628. I. S. No. 3376-h. S. No. E-10.)

On March 13, 1914, the United States attorney for the District of Connecticut, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 8 cases, each containing two dozen bottles of catsup, remaining unsold in the original unbroken packages at Bridgeport, Conn., alleging that the product had been shipped during the month of January, 1914, and transported from the State of West Virginia into the State of Connecticut, the shipment arriving on or about January 31, 1914, and charging adulteration in violation of the Food and Drugs Act. The cases were labeled: "2 Dozen number 10 Champion Brand Catsup, preserved with 1/10 of 1 per cent benzoate of soda, prepared for the E. C. Flaccus Company, Wheeling, West Virginia," "91014, 1-31-14." The bottles were labeled: "The Champion Brand Catsup, prepared from tomatoes, spice, sugar, onions, salt, vinegar & garlic. Preserved with 1/10 of 1 per cent benzoate of soda. The Champion Preserving Company, Wheeling, W. Va., The E. C. Flaccus Company, Proprietors."

Adulteration of the product was alleged in the libel for the reason that said product consisted, in whole or in part, of a filthy, putrid, or decomposed vegetable substance.

On June 3, 1915, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *November 17, 1915.*

4067. Misbranding of "Darling's Digester Tankage for Hogs." U. S. * * * v. Darling & Co., a corporation. Plea of guilty. Fine, $100. (F. & D. No. 5636. I. S. No. 27823-e.)

On June 5, 1915, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Darling & Co., a corporation, Chicago, Ill., alleging shipment by said company, in violation of the Food and Drugs Act, on November 12, 1912, from the State of Illinois into the State of Indiana, of a quantity of "Darling's Digester Tankage for Hogs" which was misbranded. The article was labeled: (On tag) "$50.00 fine for using this tag second time. No. 2620 100 Lbs. Darling & Company of Chicago, Ill., Guarantee this Darling's 60% Digester Tankage to contain not less than 5% crude fat, 60% crude protein and to be compounded from the following ingredients Meat Product. W. J. Jones, Jr., State Chemist, Purdue University, Agricultural Experiment Station, Lafayette, Ind. Not good for more than 100 Pounds." (On bag) "100 Lbs. Darling's Darling's Digester Tankage for Hogs. Guaranteed Analysis: Protein 60%, Fat 5%, Fiber 5%. Manufactured by Darling & Company Union Stock Yards, Chicago, Ill."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Moisture (per cent)	12.65
Ether extract (per cent)	0.20
Protein (per cent)	57.84
Crude fiber (per cent)	3.70

Misbranding of the article was alleged in the information for the reason that the statement "5% crude fat," borne on the tags attached to the bags in which the article of food was shipped and delivered for shipment, and the statement "Fat 5%," borne on each of the bags aforesaid, were false and misleading in that said statements created the impression that the article of food contained 5 per cent fat or crude fat, whereas, in truth and in fact, the article of food did not contain 5 per cent fat or crude fat, but contained a much less amount of fat or crude fat. Misbranding was alleged for the further reason that the statement "60% crude protein," borne on each of the labels attached to the bags, and the statement "Protein 60%," borne on each of said bags, were false and misleading in that said statements created the impression that the article of food aforesaid contained 60 per cent protein or crude protein, whereas, in truth and in fact, the article of food did not contain 60 per cent protein or crude protein.

On June 22, 1915, the defendant company entered a plea of guilty to the information, and on June 30, 1915, the court imposed a fine of $100 and costs.

C. F. MARVIN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *November 17, 1915.*

4068. Adulteration and misbranding of vinegar. U. S. v. The Harbauer Co. Plea of nolo contendere. Fine, $25 and costs. (F. & D. No. 5644. I. S. No. 2679-e.)

On May 28, 1914, the United States attorney for the Northern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against The Harbauer Co., a corporation formerly trading under the corporate name and title of The Harbauer-Marleau Co., Toledo, Ohio, alleging the sale by said company, on or about September 27, 1912, under a written guaranty that the article was not adulterated or misbranded within the meaning of the Food and Drugs Act, of a quantity of vinegar which was an adulterated and misbranded article within the meaning of said act, and which said article was, on November 29, 1912, shipped by the purchaser thereof, in the identical condition as when received from the said defendant company, from the State of Ohio into the State of Pennsylvania. The product was labeled: (Principal label on barrel) "Onward Brand Cider Vinegar, for the John H. Fitch Co., Youngstown, O."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

Alcohol (per cent by volume)	1.35
Glycerol (grams per 100 cc)	0.04
Solids (grams per 100 cc)	1.70
Nonsugar solids (grams per 100 cc)	0.74
Reducing sugars, invert after evaporation (grams per 100 cc)	0.96
Ash (grams per 100 cc)	0.34
Total acids as acetic (grams per 100 cc)	4.00
Alkalinity soluble ash (cc N/10 acid per 100 cc)	33.4
Total phosphoric acid (mg per 100 cc)	16.8
Polarization, direct, at 20° C. (°V.)	0.22
Sugar in solids (per cent)	56.47
Ash in nonsugar solids (per cent)	45.94

Lead precipitate: Light.

Adulteration of the article was alleged in the information for the reason that substances, to wit, a dilute solution of acetic acid or distilled vinegar and a product high in reducing sugars and foreign ash material, prepared in imitation of cider vinegar, had been substituted wholly or in part for the true cider vinegar which said article purported to be.

Misbranding was alleged for the reason that the label of the article bore the following statement, to wit, "Onward Brand Cider Vinegar," which said statement was false and misleading in that said article was not pure cider vinegar as represented, but was in fact, in whole or in part, a mixture of dilute acetic acid or distilled vinegar and a product high in reducing sugars and added ash material, prepared in imitation of cider vinegar; and for the further reason that the article was an imitation vinegar, prepared in whole or in part from dilute acetic acid or distilled vinegar and a product high in reducing sugars and added ash material which was made to simulate true cider vinegar, and was offered for sale and sold under the distinctive name of another article, to wit, cider vinegar.

On April 15, 1915, the defendant company entered a plea of nolo contendere to the information, and the court imposed a fine of $25 and costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *November 17, 1915.*

4069. Misbranding of cottonseed meal or cake. U. S. v. Apache Cotton Oil & Manufacturing Co. Plea of guilty. Fine, $25 and costs. (F. & D. No. 5654. I. S. No. 1987-e.)

At the November, 1914, term of the District Court of the United States, within and for the Eastern District of Oklahoma, the United States attorney for the said district, acting upon a report by the Secretary of Agriculture, filed in the said district court an information against the Apache Cotton Oil & Manufacturing Co., a corporation, Chickasha, Okla., alleging shipment by said company, in violation of the Food and Drugs Act, on or about January 2, 1913, from the State of Oklahoma into the State of Illinois, of a quantity of cottonseed meal or cake which was misbranded. The product was labeled: (On bag) "Apache Chief Cottonseed Meal or Cake (Design of Indian head) Manufactured by Apache Cotton Oil and Mfg. Co., Chickasha, Okla., U. S. A.—For Drawback—Fulton Bags, N. O., La." (On tag) "Imperial Cotto Brand Choice Cotton Seed Meal 100 lbs. Guaranteed Analysis: Ammonia, not less than 8.00%; Nitrogen, not less than 6.50%; Protein, not less than 41.00% to 45.00%; Crude Fat, not less than 8.00%; Crude Fibre (Maximum), not less than 9.00%. Imperial Cotto Milling Company, Memphis, Tenn."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

Moisture (per cent)	7.99
Ether extract (per cent)	6.99
Protein (per cent)	38.69
Crude fiber (per cent)	13.13

Misbranding of the article was alleged in the information for the reason that the statement "Protein 41.00% to 45.00%," borne on the labels attached to the sacks in which the article was shipped and delivered for shipment, was false and misleading, because, as a matter of fact, said article did not contain protein to the amount of 41.00 to 45.00 per cent, as represented by said labels, but contained a less amount of protein, to wit, 38.69 per cent. Misbranding was alleged for the further reason that the statement, "Crude Fiber (maximum) not less than 9.00 %," borne on the labels attached to the packages in which the article was shipped and delivered for shipment, was misleading and deceptive, because it was calculated to mislead and deceive the purchaser into the belief that said article contained only 9.00 per cent of crude fiber, whereas, in truth and in fact, said article contained more than 9.00 per cent of crude fiber, to wit, 13.13 per cent.

On February 23, 1915, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $25 and costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *November 17, 1915.*

4070. Adulteration and misbranding of "Monogram Mustard Horse-Radish." U. S. * * * v. Knadler & Lucas, a corporation. Plea of guilty. Fine, $25 and costs. (F. & D. No. 5733. I. S. No. 2012-e.)

On December 1, 1914, the United States attorney for the Western District of Kentucky, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Knadler & Lucas, a corporation, Louisville, Ky., alleging shipment by said company, in violation of the Food and Drugs Act, on or about September 23, 1912, from the State of Kentucky into the State of Oklahoma, of a quantity of "Monogram Mustard Horse-Radish" which was adulterated and misbranded. The article was labeled: (On jar) "Monogram Mustard Horse-Radish KL Put up by Knadler & Lucas Louisville, Ky." (Neck label) "Qualite Superieure Preserved with 1/10 of 1% Benzoate Sodium." (On shipping package) "2 doz. No. 8 Imperial Mustard Horse Radish Packed by Knadler & Lucas Inc. Louisville, Ky. U. S. A."

Examination of a sample of the product by the Bureau of Chemistry of this department showed that said product contained turmeric and a large amount of charlock.

Adulteration of the article was alleged in the information for the reason that a substance, to wit, charlock, otherwise known as wild mustard, had been mixed and packed with the article so as to reduce and lower and injuriously affect its quality and strength, and for the further reason that a substance, to wit, charlock, otherwise known as wild mustard, had been substituted in whole or in part for mustard horse-radish which the article purported to be.

Misbranding was alleged for the reason that the statement, to wit, "Mustard Horse-Radish," borne on the label of the article, was false and misleading in that it purported and represented said article to be a genuine mustard horse-radish, whereas, in truth and in fact, said article was not a genuine mustard horse-radish, but was a mixture of mustard horse-radish and charlock, otherwise known as wild mustard. Misbranding was alleged for the further reason that the article was offered for sale under the distinctive name of another article, to wit, "Mustard Horse-Radish," whereas, in truth and in fact, it was not mustard horse-radish, but was a mixture of mustard horse-radish and charlock, otherwise known as wild mustard.

On March 9, 1915, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $25 and costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *November 20, 1915.*

4071. Misbranding of "Erdoline." U. S. * * * v. 22 Cases * * * of "Erdoline." Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 5740. I. S. No. 22367-h. S. No. E-46.)

On June 4, 1914, the United States attorney for the District of Columbia, acting upon a report by the Secretary of Agriculture, filed in the Supreme Court of the District aforesaid, holding a district court, a libel for the seizure and condemnation of 22 cases, more or less, each containing one dozen packages of "Erdoline," remaining unsold in the original unbroken packages at Washington, D. C., alleging that the article was being offered for sale and sold in the District of Columbia, and charging misbranding in violation of the Food and Drugs Act, as amended. The cases were labeled in part: "Glass—Glass—One Dozen Erdoline from the Oleon Chemical Co., Washington, D. C. Glass—Glass."

It was alleged in the libel that the article was misbranded in that each and every package containing the drug was labeled and branded as follows: "Erdoline" "A valuable Preparation . . . for Bronchial Pulmonary Catarrhal and other Diseases of the Throat and Lungs. Also for . . . Colds, Croup and General Debility," and each of said packages was encased in cartons branded with, and containing, the following statements, "Erdoline" "A Valuable Preparation . . . for Bronchial, Pulmonary and other Diseases of the Throat and Lungs, also Asthmatic affections, . . . Colds . . . La Grippe and General Debility." * * * "A Perfect Substitute for Cod Liver Oil and its Emulsions," and within each of said cartons were circulars which contained the following statements, (In circular) "The Physiologic effects of Erdoline have been found to be that of an antiseptic, stimulant, antispasmodic, diaphoretic and expectorant, the equal of which we honestly believe has never before been prepared from crude petroleum; and we do not hesitate to say that no other preparation, simple or compound, can be depended upon to produce such satisfying results in the various diseases for which it is indicated . . . The diseases for which it is indicated are, in part, Bronchial, Pulmonary, and Catarrhal conditions, and the various diseases of the throat and lungs; also for asthmatic affections, wasting diseases, La Grippe, General Debility . . . and Colds," "Substitute for Cod Liver Oil. Cod Liver Oil and its emulsion, long used for the above enumerated diseases, can easily be laid aside when it is possible for the physician to prescribe this tasteless and odorless petroleum, the great flesh and tissue builder. As a matter of fact, patients who refuse cod liver oil will take Erdoline readily and grow strong in its use. Its prompt assimilation with the food is very noticeable, besides it does not cause eructations nor nausea, and is easily digested by the most delicate stomach. This in itself should recommend its use" * * * "Relieves when other remedies fail, * * *," "Here in the Nation's Capital Erdoline is prescribed by all our physicians with that certainty of success which comes from confidence in nature's remedy; and from all parts of the United States we have received unsolicited reports from the leading physicians in their respective sections, extolling the virtues of this remedy," which statements contained as aforesaid in the labels, cartons, and circulars were false and fraudulent, in that they were severally statements of the curative or therapeutic effect of said drug and of the ingredients and substances contained therein, which statements were false and fraudulent for the reason that the drug contained no ingredients or combination of ingredients capable of producing the therapeutic effect claimed for it in the said statements.

On June 2, 1915, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be disposed of by the United States marshal in such manner as would not violate the provisions of the Food and Drugs Act. On June 3, 1915, the goods were destroyed as shown by the return of the United States marshal, in accordance with the provisions of the aforementioned decree of the court.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *November 20, 1915.*

4072. Misbranding of spring water. U. S. v. 25 Cases * * * of * * * Spring Water. Default decree of condemnation and forfeiture. Product ordered sold. (F. & D. No. 5751. I. S. No. 9642-h. S. No. C-41.)

On June 9, 1914, the United States attorney for the District of Indiana, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 25 cases, more or less, each containing twelve ½-gallon bottles of a substance purporting to be spring water, remaining unsold in the original unbroken packages at Hammond, Ind., alleging that the product had been shipped on April 30, 1914, and transported from the State of Illinois into the State of Indiana, and charging misbranding in violation of the Food and Drugs Act, as amended. Twenty of the cases were labeled: "Robinson Spring Water for Bright's Disease, Diabetes, Kidney and Bladder Troubles. Chicago—New York." Five of the cases were branded: "Robinson Spring Water cures Bright's Disease, Diabetes, Kidney and Bladder Troubles. Chicago—New York." The bottles in all cases were branded: "Robinson Springs at Pocahontas, Miss. Spring water a natural curative. Fountain of Health. A proven record of cures of Bright's Disease, Diabetes, Dropsy, Cystitis, Gout, Rheumatism, Indigestion, Kidney, and Bladder Troubles. Robinson Springs Co., 29 South LaSalle Str., Chicago, Ill. Directions: Drink freely 10–12 Glasses per Day."

It was alleged in the libel that the substance in each of the said bottles, purporting to be spring water and branded as aforesaid, contained no ingredient nor combination of ingredients capable of producing the therapeutic effects claimed upon the labels aforesaid upon said bottles and upon said cases, and that said brands on said cases and on said bottles were wholly false and fraudulent. It was further alleged that the substance in said bottles as aforesaid was misbranded contrary to the laws of Congress made and provided in that behalf.

On September 21, 1915, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be sold by the United States marshal, but that before making such sale he should remove and obliterate all marks, brands, and figures indicating the substance contained in said containers, and should rebrand the same by placing thereon "Water of unknown kind and value."

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *November 20, 1915.*

4073. Misbranding of spring water. U. S. v. 23 Cases * * * of * * * Spring Water. Default decree of condemnation and forfeiture. Product ordered sold. (F. & D. No. 5752. I. S. No. 27603-h. S. No. C-42.)

On June 8, 1914, the United States attorney for the District of Indiana, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 23 cases, more or less, each containing twelve ½-gallon bottles of a substance purporting to be spring water, remaining unsold in the original unbroken packages at Indianapolis, Ind., alleging that the product had been shipped on or about June 2, 1914, and transported from the State of Illinois into the State of Indiana, and charging misbranding in violation of the Food and Drugs Act, as amended. The cases were branded: "Robinson Spring Water for Bright's Disease, Diabetes, Kidney and Bladder Troubles. Chicago—New York." The bottles were branded: "Robinson Springs at Pocahontas, Miss. Spring Water A natural curative Fountain of Health A proven record of cures of Bright's Disease, Diabetes, Dropsy, Cystitis, Gout, Rheumatism, Indigestion, Kidney and Bladder Troubles. Robinson Springs Co. 29 South LaSalle Str. Chicago, Ill. Directions: Drink freely 10–12 Glasses per Day."

It was alleged in the libel that the substance in each of the bottles, purporting to be spring water and branded as aforesaid, contained no ingredient nor combination of ingredients capable of producing the therapeutic effects claimed upon the labels aforesaid upon said bottles and upon said cases, and that said brands on said cases and on said bottles were wholly false and fraudulent. It was further alleged that said substance in said bottles was misbranded contrary to the laws of Congress made and provided in that behalf.

On September 21, 1915, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be sold by the United States marshal, but that before making such sale he should remove and obliterate all marks, brands, and figures indicating the substance contained in said bottles, and should rebrand the same, by placing thereon the words "Water of unknown kind and value."

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *November 20, 1915.*

4074. Adulteration of milk. U. S. v. E. J. Green. Plea of nolo contendere. Information dismissed. (F. & D. No. 5759. I. S. No. 12937-e.)

On July 30, 1914, the United States attorney for the Northern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against E. J. Green, Austinburg, Ohio, alleging shipment by said defendant, in violation of the Food and Drugs Act, on or about June 30, 1913, from the State of Ohio into the State of Pennsylvania, of a quantity of milk which was adulterated.

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

Milk solids (per cent)	8.77
Fat (per cent)	1.80
Solids not fat (per cent)	6.97
Ash (per cent)	0.58
Specific gravity, at 60° F	1.0263
Refraction of serum, at 20° C	35.4

Nitrate test: Positive.

The results show the sample to contain added water.

Adulteration of the product was alleged in the information for the reason that a substance, to wit, water, was mixed with the article so as to lower and reduce and injuriously affect its quality, and, further, for the reason that a valuable constituent of the article, to wit, fat, had been wholly or in part abstracted.

On February 25, 1915, the defendant entered a plea of nolo contendere to the information, and the court ordered the same dismissed upon the ground that investigation showed that the water had been added to the milk by a boy employed without the knowledge or consent of the defendant.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *November 20, 1915.*

4075. Misbranding of butter. U. S. v. George H. Gurler et al. (Gurler & Co.). Plea of guilty. Fine, $10 and costs. (F. & D. No. 5776. I. S. No. 9657-c.)

On March 15, 1915, the United States attorney for the Northern District of Iowa, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against George H. Gurler and Charles H. Gurler, copartners, trading under the firm name of Gurler & Co., Cedar Rapids, Iowa, alleging shipment by said defendants, in violation of the Food and Drugs Act, on or about April 1, 1913, from the State of Iowa into the District of Columbia, of a quantity of butter which was misbranded. The product was labeled: "16 oz. net weight Brookfield Extra Creamery Butter."

Examinations of samples of the product by the Bureau of Chemistry of this department showed the following results:

WEIGHTS 10 PRINTS.

Print No.—	Net weight.	Shortage.		Print No.—	Net weight.	Shortage.	
	Ounces.	*Ounces.*	*Per cent.*		*Ounces.*	*Ounces.*	*Per cent.*
1	15.85	0.15	0.94	6	15.64	0.36	2.25
2	15.69	.31	1.94	7	15.92	.08	.50
3	15.31	.69	4.31	8	15.46	.54	3.37
4	14.90	1.10	6.87	9	14.27	1.73	10.86
5	14.81	1.19	7.43	10	14.87	1.13	7.06

Misbranding of the article was alleged in the information for the reason that the statement, to wit, "16 oz.," borne on the label attached to the package containing the article, was false and misleading in that it purported and represented that the contents of each of the packages weighed 16 ounces, whereas, in truth and in fact, the contents of each of said packages did not weigh 16 ounces, but did weigh a less amount; misbranding was alleged for the further reason that each package of the article was labeled "16 oz." so as to deceive and mislead the purchaser into the belief that the contents of each of the packages weighed 16 ounces, whereas, in truth and in fact, the contents of each of said packages did not weigh 16 ounces, but did weigh a less amount.

On April 6, 1915, a plea of guilty was entered on behalf of the defendants, and the court imposed a fine of $10 and costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *November 20, 1915.*

4076. Adulteration and misbranding of graham flour. U. S. v. The North Star Feed and Cereal Co. Plea of guilty. Fine, $40. (F. & D. No. 5781. I. S. Nos. 9855-e, 4720-e.)

On April 6, 1915, the United States attorney for the District of Minnesota, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against The North Star Feed and Cereal Co., a corporation, Minneapolis, Minn., alleging shipment by said company, in violation of the Food and Drugs Act, on or about November 8, 1912, and February 7, 1913, from the State of Minnesota into the State of North Dakota, of quantities of graham flour which was adulterated and misbranded. The product in both shipments was labeled: (On tag attached to jute sack) "Wheat Graham Manufactured by The North Star Feed & Cereal Co., Minneapolis, Minn." (On bag containing the article) "North Star Feed and Cereal Co. Choice Graham Flour. Minneapolis, Minn. 10 Lbs. When Packed Choice Graham."

Examination of a sample of the product from one of the shipments, by the Bureau of Chemistry of this department, showed the following results:

Description.	Sifted.		Character.	Ash.	Nitrogen.	Alcohol-soluble nitrogen.
	Sieve No.	Per cent.				
				Percent.	*Per cent.*	*Per cent.*
Graham				2.04	2.68	1.01
Bran	On 20	4.2	Clean, broad		2.58	.547
Shorts	On 40	4.4	Clean		2.98	.716
Coarse middlings	On 70	7.4	Good		2.47	1.01
Fine middlings	On 109	15.4	Poor, even grade		2.75	.877
Flour	Through 109	68.2	Poor	1.64	2.67	1.09

Examination of the product showed it to be a mixture of bran, shorts, low-grade flour, and other mill products made in imitation of graham flour.

Analysis of a sample from the other shipment, by said bureau, showed the following results:

Description.	Sifted.		Character.	Ash.	Nitrogen.	Alcohol-soluble nitrogen.
	Sieve No.	Per cent.				
				Percent.	*Per cent.*	*Per cent.*
Graham				2.08	2.72	1.25
Bran	On 20	4.5	Broad, clean		2.51	.540
Shorts	On 40	4.7	Clean		2.73	.702
Coarse middlings	On 70	8.5	Good		2.27	.997
Fine middlings	On 109	15.8	Poor, even texture		2.82	1.20
Flour	Through 109	66.1	Poor	1.63	2.71	1.26

Examination of the product showed it to be a mixture of bran, shorts, low-grade flour and other mill products made in imitation of graham flour.

Adulteration of the product in both shipments was alleged in the information for the reason that a substance, to wit, a mixture consisting of an inferior grade of flour, bran, shorts, and other mill products, had been mixed and packed with the article so as to lower and reduce and injuriously affect its quality and strength, and, further, for the reason that a substance, to wit, a mixture consisting of an inferior grade of flour, bran, shorts, and other mill products, had been substituted, wholly or in part, for choice graham flour which the article purported to be.

Misbranding of the product in both shipments was alleged for the reason that the statement, to wit, "Choice Graham Flour," borne on the label thereof, was false and misleading in that it purported and represented the article to be a choice graham

flour, whereas, in truth and in fact, it was not a choice graham flour, but was a mixture consisting of an inferior grade of flour, bran, shorts, and other mill products. Misbranding was alleged for the further reason that the article was labeled and branded "Choice Graham Flour," so as to deceive and mislead the purchaser into the belief that it was, as understood by the trade and the public generally, a superior grade of graham flour, whereas, in truth and in fact, said article was not a choice graham flour, but was a mixture consisting of an inferior grade of flour, bran, shorts, and other mill products.

On June 25, 1915, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $40.

C. F. MARVIN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *November 20, 1915.*

4077. Adulteration and misbranding of "Maraschino." U. S. v. S. Hirsch Distilling Co. (Minuet Cordial Co.). Plea of guilty. Fine, $50 and costs. (F. & D. No. 5783. I. S. No. 724–e.)

On December 8, 1914, the United States attorney for the Western District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the S. Hirsch Distilling Co., a corporation, doing business under the name of the Minuet Cordial Co., Kansas City, Mo., alleging shipment by said defendant, in violation of the Food and Drugs Act, on or about July 10, 1912, from the State of Missouri into the State of Texas, of a quantity of "Maraschino" which was adulterated and misbranded. The product was labeled: (Blown in glass on neck of bottle) "Maraschino" with Austrian coat of arms. (Main label) "Maraschino Zara Style Liqueur (Design of eagle on sphere) Minuet Cordial Co., Kansas City, Missouri." (On shipping container) (Ends) "Maraschino. Guaranteed Serial No. 5597" (Top) "12 btls." "Glass," "Minuet Cordial Co., Kansas City, Missouri."

Examination of a sample of the product by the Bureau of Chemistry of this department showed the following results:

Alcohol (per cent)	29.5
Solids (per cent)	26.9
Esters (grams per 100 cc)	0.0022
Aldehydes (grams per 100 cc)	0.0004

Benzaldehyde: Present.

The sample does not have the flavor of genuine maraschino, but is a product prepared essentially from spirits and artificially flavored to imitate genuine maraschino.

Adulteration of the article was alleged in the information for the reason that an imitation product flavored with benzaldehyde had been substituted in whole or in part for genuine maraschino which the article purported to be.

Misbranding was alleged for the reason that the statement, to wit, "Maraschino" and the Austrian coat of arms blown on [in] the bottle containing said article, and the statement "Maraschino Zara Liqueur" with the word "Style" in inconspicuous type, borne on the label thereof, were false and misleading in that they purported and represented said article to be a genuine maraschino liqueur, whereas, in truth and in fact, said article was not a genuine maraschino liqueur, but was an imitation product flavored with benzaldehyde. Misbranding was alleged for the further reason that the article was offered for sale and sold under the distinctive name of another article, to wit, "Maraschino," whereas, in truth and in fact, it was not maraschino, but was an imitation product flavored with benzaldehyde; and, further, for the reason that it was labeled and branded "Maraschino Zara Liqueur" with the word "Style" in inconspicuous type, which said statement, together with the Austrian coat of arms blown on [in] the bottle, as aforesaid, and the style and appearance of the package, which was made to resemble containers as used by the foreign manufacturers of the genuine article, were calculated to mislead and deceive the purchasers into the belief that said article was a maraschino liqueur of foreign manufacture, whereas, in truth and in fact, it was not so, but was, on the contrary, of domestic origin, to wit, an imitation product flavored with benzaldehyde made in the United States of America.

On June 5, 1915, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $50 and costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *November 20, 1915.*

4078. Misbranding of "Excello Horse Feed." U. S. v. The Excello Feed Milling Co. Plea of guilty. Fine, $10 and costs. (F. & D. No. 5797. I. S. No. 6800-e.)

On December 7, 1914, the United States attorney for the Western District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Excello Feed Milling Co., a corporation, St. Joseph, Mo., alleging shipment by said defendant, in violation of the Food and Drugs Act, on or about January 29, 1913, from the State of Missouri into the State of Kansas, of a quantity of "Excello Horse Feed" which was misbranded. The product was labeled: (On bag) "Excello Reg. U. S. Pat. Office Horse Feed For wise feeders 100 lbs. (picture of horses' heads) for strength, for speed. Manufactured & guaranteed by Excello Feed Milling Co., Sole manufacturers, St. Joseph, Mo., U. S. A. Also Mfrs. Excello Dairy Feed & Cattle fattener Bemis, Kansas City, Mo." (On tag) "To * * * 100 lbs. Excello Horse Feed Guaranteed Analysis: Protein not less than 11.51 per cent.; Fat, not less than 4.10 per cent.; Carbo-hydrates, not less than 58.41 per cent.; Crude fiber 10.00 to 15.00 per cent.; Ingredients: Alfalfa meal, corn chops, crushed oats, linseed meal, cane molasses and salt. Manufactured by Excello Feed Milling Co., St. Joseph, Mo."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

Moisture (per cent)	18.72
Ether extract (per cent)	1.92
Protein (per cent)	9.32
Crude fiber (per cent)	11.26

Misbranding of the product was alleged in the information for the reason that the statement, to wit, "Guaranteed Analysis: Protein not less than 11.51 per cent.; Fat, not less than 4.10 per cent.," borne on the tags attached to the bags which contained the article, was false and misleading in that it purported and represented that said article contained 11.51 per centum of protein, and 4.10 per centum of fat, whereas, in truth and in fact, said article did not contain 11.51 per centum of protein and 4.10 per centum of fat, but contained a less amount of protein and a less amount of fat, to wit, 9.32 per centum of protein and 1.92 per centum of fat. Misbranding was alleged for the further reason that the article was labeled and branded "Guaranteed Analysis: Protein not less than 11.51 per cent.; Fat, not less than 4.10 per cent.," so as to deceive and mislead the purchaser into the belief that it contained not less than 11.51 per centum of protein and not less than 4.10 per centum of fat, whereas, in truth and in fact, it contained a less amount of protein and a less amount of fat, to wit, 9.32 per centum of protein and 1.92 per centum of fat.

On March 15, 1915, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $10 and costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *November 20, 1915.*

4079. Adulteration of evaporated apples. U. S. * * * v. 50 Boxes of so-called Evaporated Apples. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 5798. I. S. No. 9186-h. S. No. C-56.)

On or about July 3, 1914, the United States attorney for the Northern District of Texas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 50 boxes, each containing 50 pounds of so-called evaporated apples, remaining unsold in the original unbroken packages at Dallas, Tex., alleging that the product had been shipped on or about June 4, 1914, and transported from the State of Missouri into the State of Texas, and charging adulteration in violation of the Food and Drugs Act. The product was labeled: "Sunset Brand Evaporated or Dried Product of Apples, prepared with salt water and sulphur fumes, U. S. Government Registration, 1908, by J. W. Teasdale & Company, at Washington, D. C. No. 12243 New Crop Faultless blending of American Apples."

It was alleged in the libel that an analysis of official samples of the evaporated apples by the United States Bureau of Chemistry, made under the direction of the Secretary of Agriculture, showed that said apples had a moisture content of 31.3 per cent; that they were of poor stock, containing an excessive amount of water which had been mixed and packed with said evaporated apples in such manner as to reduce, lower, and injuriously affect their quality and strength, said so-called evaporated apples being adulterated in violation of section 7, paragraph 1, under "Food," Food and Drugs Act, being an act of Congress of the United States approved June 30, 1906.

On January 30, 1915, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *November 20, 1915.*

4080. Adulteration of so-called evaporated apples. U. S. * * * v. 90 Boxes of so-called Evaporated Apples. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 5799. I. S. No. 9187-h. S. No. C-57.)

On or about July 3, 1914, the United States attorney for the Northern District of Texas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 90 boxes, each containing 50 pounds of so-called evaporated apples, remaining unsold in the original unbroken packages at Dallas, Tex., alleging that the product had been shipped, on or about June 4, 1914, and transported from the State of Missouri into the State of Texas, and charging adulteration in violation of the Food and Drugs Act. The product was labeled: "Royal Brand Evaporated or Dried Product of Apples Prepared with salt water and sulphur fumes U. S. Government Registration by J. W. Teasdale & Company at Washington, D. C. No. 12243 New Crop faultless blending of American Apples."

It was alleged in the libel that an analysis of official samples of said evaporated apples by the United States Bureau of Chemistry, made under the direction of the Secretary of Agriculture, showed that said apples had a moisture content of 31.9 per cent, mixed and packed with said apples in such manner as to reduce, lower, and injuriously affect the quality of the said goods, and that said apples were scrappy, porous, and musty, and consisted in part of decomposed vegetable substance, said so-called evaporated apples being adulterated in violation of section 7, paragraphs 1 and 6 under "Food," Food and Drugs Act, being an act of Congress of the United States approved June 30, 1906.

On January 30, 1915, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *December 1, 1915.*

4081. Adulteration of evaporated apples. U. S. * * * v. 18 Boxes of so-called Evaporated Apples. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 5800. I. S. No. 9188–h. S. No. C–58.)

On or about July 3, 1914, the United States attorney for the Northern District of Texas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 18 boxes, each containing 50 pounds of so-called evaporated apples, remaining unsold in the original unbroken packages at Dallas, Tex., alleging that the product had been shipped, on or about June 4, 1914, and transported from the State of Missouri into the State of Texas, and charging adulteration in violation of the Food and Drugs Act. The product was labeled: "Grandma's Brand Evaporated or Dried Product of Apples —Prepared with salt water and sulphur fumes—Label and branding guaranteed under the Food and Drugs Act, June 30, 1906—U. S. Government Registration, 1909, by J. W. Teasdale & Company at Washington, D. C. Northern selected late and winter apples."

It was alleged in the libel that an analysis of official samples of said evaporated apples by the United States Bureau of Chemistry, made under the direction of the Secretary of Agriculture, showed that said apples had a moisture content of 29.8 per cent; that said so-called apples were of poor stock, sour, and musty; that water had been mixed and packed with said goods in such manner as to reduce, lower, and injuriously affect their quality; and, in addition, said apples consisted in whole or in part of decomposed vegetable substance; said so-called evaporated apples being adulterated in violation of section 7, paragraphs 1 and 6 under "Food," Food and Drugs Act, being an act of Congress approved June 30, 1906.

On January 30, 1915, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *December 1, 1915.*

4082. Adulteration and misbranding of gelatin. U. S. * * * v. 1 Drum, more or less, of Gelatin. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 5803. I. S. No. 7438-h. S. No. C-60.)

On July 6, 1914, the United States attorney for the Southern District of Iowa, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 1 drum of gelatin, remaining unsold in the original unbroken packages at Red Oak, Iowa, alleging that the product had been shipped, on or about June 19, 1914, and transported from the State of Illinois into the State of Iowa, and charging adulteration and misbranding in violation of the Food and Drugs Act. The product was labeled: "Clarkson Gelatine Works, Chicago."

It was alleged in the libel that the said article was being held for sale and sold as "Ground Gelatine," when, in truth and in fact, it consisted of a mixture containing sugar, bicarbonate of soda, and bone glue, and excessive amounts of zinc and copper, which caused the strength and purity of said goods to fall below the professed standard and quality under which it was sold, in violation of the Food and Drugs Act. It was further alleged that the article was liable to condemnation and confiscation for the reason that the barrel or container did not contain [A 1] ground gelatin, but, in truth and in fact, contained, wholly or in part, a mixture of gelatin, sugar, bicarbonate of soda, bone glue, and excessive amounts of zinc and copper goods, which, having been mixed therewith, rendered the same adulterated, in violation of section 7 of the Food and Drugs Act. It was further alleged that the sale and keeping for sale of said drum or container as containing [A 1] ground gelatin was misleading and false and such as to mislead and deceive the purchaser, and such as to enable the offering of the contents for sale as being [A 1] ground gelatin, when, in truth and in fact, the same was not such as was offered for sale, and was an unlawful adulteration within the meaning of the statute aforesaid. It was further alleged that said drum or container contained arsenic, 2 parts per million; copper, 74 parts per million; zinc, 607 parts per million; sugar, 2.73 per cent; together with excessive amounts of zinc and copper added, which might render the said article injurious to health. It was further alleged that in addition to said ingredients above set out there had been added to said shipment bone glue, sugar, and bicarbonate of soda, which had been substituted for gelatin in such a manner as to reduce and lower and injuriously affect the quality and strength of said contents; that by reason of the ingredients set out above in detail, some of said article had been substituted, wholly or in part, for said [A 1] ground gelatin; that by the substitution of said article heretofore set out a valuable constituent of said article, to wit, gelatin, had been, wholly or in part, abstracted; all in violation of section 7 of the Food and Drugs Act. It was further alleged that, by reason of said mixture of said foreign ingredients with said gelatin, the quality and strength of said gelatin was injuriously affected, reduced, and lowered, and the said contents of the said drum or container, as held and sold and offered for sale, contained poisonous and deleterious ingredients which rendered said article injurious to health.

It was further alleged that the drum was misbranded as to the character of its contents by brands appearing thereon outside of the original barrel or container, and that the same was liable to condemnation and confiscation as provided in said act for the reason that said drum or container did not contain [A 1] ground gelatin, but, in truth and in fact, contained, wholly or in part, a mixture of sugar, bicarbonate of soda, and bone glue, and excessive amounts of zinc and copper and other substances, all made from substances other than gelatin and a foreign substance to said article of gelatin, prepared in imitation of gelatin, and which foreign matters had been mixed and packed in imitation of the true gelatin, and had been substituted therefor, rendering the same adulterated, in violation of section 7 of the Food and Drug Act, and that within said mixture were certain substances substituted for said gela-

tin product, whereby the same was misbranded in violation of said section 8 of said Food and Drugs Act; that the labeling of said drum or container, as containing [A 1] ground gelatin, was misleading and false, and was such as to mislead and deceive the purchasers, and was such as to enable the offering of the contents for sale as [A 1] ground gelatin, when, in truth and in fact, the same was not such as was offered for sale, and was an unlawful misbranding within the meaning of the statute aforesaid, and was also an unlawful adulteration and mixture of said product.

On March 9, 1915, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

(The investigation by this department, upon which the recommendation for the seizure of the article was based, did not show that the article contained bicarbonate of soda.)

C. F. MARVIN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *December 1, 1915.*

4083. Adulteration and alleged misbranding of whisky. U. S. v. Benjamin J. Epstein et al. (Benjamin J. Epstein & Co.). Plea of guilty to charge of adulteration. Fine, $40. Counts of information alleging misbranding nolle prossed. (F. & D. No. 5811. I. S. Nos. 4411-h, 4412-h.)

On February 4, 1915, the United States attorney for the Eastern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information in 8 counts against Benjamin J. Epstein and Samuel Goldberg, copartners, trading under the firm name of Benjamin J. Epstein & Co., Danville, Ill., alleging shipment by said defendants, in violation of the Food and Drugs Act, on or about August 12, 1913, from the State of Illinois into the State of Indiana, of quantities of whisky to different consignees, which was adulterated and alleged to have been misbranded. The product was labeled: "Old Prinston High Grade 100 Proof Whiskey, bottled by B. J. Epstein & Co., Wholesale Liquors, Danville, Ill." (Label on neck of bottle) "100 Proof Aged in Wood 100 Proof Guaranteed Straight Whiskey Guaranteed to comply with the National Pure Food Law 100 Proof Guaranteed Straight Whiskey 100 Proof Full Measure."

Analyses of samples of the product by the Bureau of Chemistry of this department showed the following results, expressed as parts per 100,000—100 proof alcohol, unless otherwise stated:

	No. 1.	No. 2.
Proof (degrees)	97.2	99.0
Solids	139.7	126.5
Total acids, as acetic	18.5	15.8
Esters, as ethyl acetate	5.4	0.0
Aldehydes, as acetaldehyde	2.1	2.0
Furfural	0.6	0.6
Fusel oil	10.9	6.3
Color (degrees, Lovibond, ½-inch cell)	16.5	14.0
Color (per cent insoluble in amyl alcohol)	66.0	.....

Paraldehyde test: Positive.

Caramel (qualitative Marsh test): Present.

The products are neutral spirits or rectified whisky, reduced to proof with water, and artificially colored, probably with caramel.

Adulteration of the whisky was alleged in the first and fifth counts of the information for the reason that a substance, to wit, neutral spirits, artificially colored, had been substituted, in whole or in part, for high-grade 100-proof straight whisky aged in wood, which the article purported to be.

It was alleged in counts two and six that the article was misbranded, in that the statements, to wit, "High Grade, 100 Proof Whiskey," and "Aged in Wood, Guaranteed Straight Whiskey," borne on the labels thereof, were false and misleading in that they purported and represented that the article was a straight whisky aged in wood, whereas, in truth and in fact, it was not a straight whisky aged in wood, but was neutral spirits whisky colored to simulate the appearance of straight whisky aged in wood. Misbranding was alleged in the third and seventh counts for the reason that the article was an imitation of, and offered for sale and sold under the distinctive name of, another article, to wit, "Straight Whiskey Aged in Wood," whereas, in truth and in fact, it was not straight whisky aged in wood, but was neutral spirits whisky colored to simulate the appearance of straight whisky aged in wood. Misbranding was alleged in the fourth and eighth counts for the reason that the article was labeled, "High Grade 100 Proof Whiskey," and "Aged in Wood, Guaranteed Straight Whiskey," which statements, together with a design and device on the neck of the bottle containing the article, simulating the appearance of the neck label used in bottled-in-bond whisky, and a device simulating a revenue stamp on the label

attached to the bottle containing said article, all and singular, were calculated to mislead and deceive the purchaser into the belief that said article was a straight bottled-in-bond whisky which had been stored in wood under Government supervision, whereas, in truth and in fact, said article was not a straight bottled-in-bond whisky aged in wood, and was not kept under Government supervision, but was a neutral spirits whisky colored to simulate the appearance of straight whisky aged in wood.

On June 22, 1915, the defendants entered pleas of guilty to the first and fifth counts of the information, and the court imposed a fine of $40. The second, third, fourth, sixth, seventh, and eighth counts of the information, charging misbranding of the article, were nolle prossed.

C. F. MARVIN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *December 1, 1915.*

4084. Misbranding of compound vanilla flavor and extract lemon. U. S. v. Wadhams & Co. Plea of guilty. Fine, $10. (F. & D. No. 5814. I. S. Nos. 10511-e, 10512-e.)

At the July, 1915, term of the District Court of the United States for the District of Oregon, the United States attorney for said district, acting upon a report by the Secretary of Agriculture, filed in said district court an information against Wadhams & Co., a corporation, Portland, Oreg., alleging shipment by said company, in violation of the Food and Drugs Act, on or about May 16, 1913, from the State of Oregon into the State of Washington, of quantities of compound vanilla flavor and extract lemon which were misbranded. The compound vanilla flavor was labeled: (On carton) "Wadco Brand Compound Vanilla Flavor Made from Vanillin, Coumarin and Vanilla Beans. Colored with Caramel. Manufactured by Wadhams & Co. Incorporated Portland, Ore." (On side) "Wadco Brand Flavoring Extracts." (On flap) "Vanilla." (On bottle, blown in side) "2 Oz. Full Measure." (On label) "Wadco Compound Vanilla Flavor Made from Vanillin, Coumarin and Vanilla Beans Colored with Caramel, Manufactured by Wadhams & Co. Inc. Portland Ore."

Examination of samples of this product by the Bureau of Chemistry of this department showed the average content of eight bottles to be 1.89 fluid ounces, an average shortage of 0.11 fluid ounce, or 5.5 per cent.

Misbranding of this article was alleged in the information for the reason that the statement, to wit, "2 Oz. Full Measure," blown on [in] the bottle containing the article, was false and misleading in that it purported and represented said bottle to contain 2 fluid ounces full measure, whereas, in truth and in fact, said bottle did not contain 2 fluid ounces full measure but contained less than 2 fluid ounces. Misbranding was alleged for the further reason that the article was branded on the bottle thereof "2 Oz. Full Measure" so as to deceive and mislead the purchaser into the belief that said bottle contained 2 fluid ounces full measure, whereas, in truth and in fact, said bottle did not contain 2 fluid ounces full measure but contained less than 2 fluid ounces.

The extract lemon was labeled: (On carton) "Diamond W Extract Lemon Manufactured by Wadhams & Co. Inc. Portland, Oregon." (On flap at one end) "Lemon." (On flap at other end) "Two Ounces W Full Measure." (On label) "Diamond W Extract Lemon Manufactured by Wadhams & Co. Inc., Portland, Ore."

Examination of samples of this product by the said Bureau of Chemistry showed the average content of eight bottles to be 1.87 fluid ounces, an average shortage of 0.13 fluid ounce, or 6.5 per cent; the bottles were not quite full to the neck; there was room enough to have added the shortage so that the bottles would have been full measure.

Misbranding of the article was alleged in the information for the reason that the statement, to wit, "Two Ounces W Full Measure," borne on the cartons containing the bottles, and the statement, to wit, "2 Oz. Full Measure," blown on [in] the bottles which contained the article when shipped and delivered for shipment as aforesaid, were false and misleading in that they purported and represented that each of said bottles contained 2 fluid ounces full measure, whereas, in truth and in fact, each of said bottles did not contain 2 fluid ounces full measure but contained less than 2 fluid ounces. Misbranding was alleged for the further reason that the article was labeled on the cartons thereof "Two Ounces W Full Measure" and branded on the bottles thereof "2 Oz. Full Measure" so as to deceive and mislead the purchaser into the belief that each of said bottles contained 2 fluid ounces full measure, whereas, in truth and in fact, each of said bottles did not contain 2 fluid ounces full measure but contained less than 2 fluid ounces.

On September 14, 1915, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $10.

C. F. MARVIN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *December 1, 1915.*

4085. Misbranding of "Grandin's Stock Food." U. S. v. D. H. Grandin Milling Co., a corporation. Plea of nolo contendere. Fine, $25. (F. & D. No. 5818. I. S. No. 3455-e.)

On December 2, 1914, the United States attorney for the Western District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the D. H. Grandin Milling Co., a corporation, Jamestown, N. Y., alleging shipment by said company, in violation of the Food and Drugs Act, on or about January 25, 1913, from the State of New York into the State of Maine, of a quantity of stock food which was misbranded. The article was labeled: (On bag) "100 lbs. Gross weight—99⅞ lbs. net weight—Grandin's Stock Food—Guaranteed analysis: Protein 8.50%; Fat 3.50%; Fibre 10.00%; Manufactured from pure oats, corn, barley, barley middlings, hominy feed, oat hulls and salt, D. H. Grandin Milling Company, Jamestown, N. Y."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Moisture (per cent)	10.94
Ether extract ("fat") (per cent)	1.91
Crude fiber ("fibre") (per cent)	13.84
Protein (N x 6.25) (per cent)	6.69

Misbranding of the article was alleged in the information for the reason that the statement, to wit, "Guaranteed analysis: Protein 8.50%; Fat 3.50%; Fibre 10.00%," borne on the label thereof, was false and misleading in that it purported and represented that said article contained not less than 8.50 per cent of protein and not less than 3.50 per cent of fat and that it contained not more than 10.00 per cent of fiber, whereas, in truth and in fact, it contained less than 8.50 per cent of protein and less than 3.50 per cent of fat, and contained more than 10.00 per cent of fiber, to wit, 6.69 per cent of protein, 1.91 per cent of fat, and 13.84 per cent of fiber. Misbranding was alleged for the further reason that the article was labeled "Guaranteed analysis: Protein 8.50%; Fat 3.50%; Fibre 10.00%," so as to deceive and mislead the purchaser into the belief that it contained not less than 8.50 per cent of protein and not less than 3.50 per cent of fat and did not contain more than 10.00 per cent of fiber, whereas, in truth and in fact, said article contained less than 8.50 per cent of protein and 3.50 per cent of fat and contained more than 10.00 per cent of fiber, to wit, 6.69 per cent of protein, 1.91 per cent of fat, and 13.84 per cent of fiber.

On July 22, 1915, the defendant company withdrew its former plea of not guilty and entered a plea of nolo contendere to the information, and the court thereupon imposed a fine of $25.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *December 1, 1915.*

4086. Adulteration and misbranding of cherry wine and grape wine. U. S. * * * v. Brownsville Fruit Distilling Co., a corporation. Plea of guilty. Fine, $20. (F. & D. No. 5819. I. S. Nos. 5943-e, 5944-e.)

At the February, 1915, term of the District Court of the United States for the Eastern District of New York, the United States attorney within and for said district, acting upon a report by the Secretary of Agriculture, filed in the district court aforesaid an information against the Brownsville Fruit Distilling Co., a corporation, Brooklyn, N. Y., alleging shipment by said company, in violation of the Food and Drugs Act, on or about April 4, 1913, from the State of New York into the State of Pennsylvania, of a quantity of cherry wine and grape wine, which products were adulterated and misbranded in violation of the Food and Drugs Act. The cherry wine was labeled in part: "Cherry Wine." (On tag) "To order of Brownsville Fruit Distilling Co., 1842–44 Pitkin Avenue, Brooklyn, N. Y."

Analysis of a sample of this product by the Bureau of Chemistry of this department showed the following results, expressed as grams per 100 cc, unless otherwise noted:

Solids (Brix table)	38.89
Nonsugar solids	11.03
Sucrose by copper	0.46
Reducing sugars as invert	27.40
Polarization, direct, at 22° C., undiluted (°V.)	+55.50
Polarization, invert, at 22° C., undiluted (°V.)	+55.40
Polarization, invert, at 87° C., undiluted (°V.)	+80.80
Glucose (factor 163)	12.95
Tartaric acid (wine method)	0.07
Malic acid (Dunbar-Bacon method)	0.18
Citric acid (Denige's tests): None.	
Benzaldehyde: None.	
Hydrocyanic acid (Schonbein test): None.	

Adulteration of the article was alleged in the information for the reason that an imitation product, prepared in part from starch sugar, and containing little or no cherry, had been substituted in whole or in part for genuine cherry wine which the article purported to be.

Misbranding was alleged for the reason that the statement, to wit, "Cherry Wine," borne on the label of the article, was false and misleading in that it represented and purported said article to be a genuine cherry wine, whereas, in truth and in fact, it was not a genuine cherry wine, but was an imitation product, prepared in part from starch sugar and containing little or no cherry. Misbranding was alleged for the further reason that the article was labeled "Cherry Wine" so as to deceive and mislead the purchaser into the belief that it was a genuine cherry wine, whereas, in truth and in fact, it was not a genuine cherry wine, but was an imitation product, prepared in part from starch sugar, and containing little or no cherry.

The grape wine was labeled in part: "Grape Wine" (Other end of barrel) Labeled in Yiddish, and "Brownsville Fruit Distilling Co." Some illegible matter "New York."

Analysis of a sample of this product by the said Bureau of Chemistry showed the following results, expressed as grams per 100 cc, unless otherwise noted:

Solids (Brix table)	34.47
Nonsugar solids	8.92
Sucrose by copper	6.57
Reducing sugar as invert	18.98
Polarization, direct, at 22° C., undiluted (°V.)	+95.60
Polarization, invert, at 22° C., undiluted (°V.)	+62.32

Polarization, invert, at 87° C., undiluted (°V.)	+84.70
Sucrose (Clerget)	6.57
Glucose (factor 163)	13.51

Benzoic acid (modified Mohler test): Positive.

Colored with coal-tar color, Amaranth, S. & J. 107.

Product contains glucose sirup and sodium benzoate, and is colored with a coal-tar dye.

Adulteration of the article was alleged in the information for the reason that an imitation product, containing glucose and benzoate of soda, had been substituted in whole or in part for genuine grape wine which the article purported to be, and for the further reason that the article was colored in a manner whereby its inferiority was concealed.

Misbranding was alleged for the reason that the statement, to wit, "Grape Wine," borne on the label of the article, was false and misleading in that it purported and represented said article to be a genuine grape wine, whereas, in truth and in fact, it was not a genuine grape wine, but was an imitation product, artificially colored, containing glucose and benzoate of soda. Misbranding was alleged for the further reason that the article was labeled "Grape Wine" so as to deceive and mislead the purchaser into the belief that it was a genuine grape wine, whereas, in truth and in fact, it was not a genuine grape wine, but was an imitation product, artificially colored, containing glucose and benzoate of soda.

On March 5, 1915, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $20.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *December 1, 1915.*

4087. Misbranding of cottonseed meal and cottonseed cake. U. S. v. Apache Cotton Oil & Manufacturing Co., a corporation. Plea of guilty. Fine, $50 and costs. (F. & D. No. 5821. I. S. Nos. 6761-e, 6762-e.)

On February 23, 1915, the United States attorney for the Eastern District of Oklahoma, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Apache Cotton Oil & Manufacturing Co., a corporation, Chickasha, Okla., alleging shipment by said company, in violation of the Food and Drugs Act, on or about February 25, 1913, from the State of Oklahoma into the State of Kansas, of quantities of cottonseed meal and cottonseed cake which were misbranded. The cottonseed meal was labeled: (Tag) "100 pounds gross. Guaranteed analysis: Protein 41 to 43 per cent. Ammonia 7½ to 8½ per cent. Oil fat 6 to 7 per cent. Manufactured by the Apache Cotton Oil and Manufacturing Company, Chickasha, Oklahoma. Net 99½ pounds Choice Cottonseed Meal Manufactured by Apache Cotton Oil & Mfg. Co., Chickasha, Okla. Guaranteed Analysis: Crude Protein 41%, Crude Fat 7½%, Nitrogen-free extract 25%, Crude fiber 9%."

Analysis of a sample of this product by the Bureau of Chemistry of this department showed the following results:

Ether extract ("crude fat") (per cent)	6.48
Crude fiber (per cent)	14.49
Ammonia (N x 1.2158) (per cent)	7.05
Protein ("crude protein") (per cent)	36.25

Misbranding of this product was alleged in the information for the reason that the statement, to wit, "Guaranteed Analysis: Crude Protein 41%, Crude Fat 7½%, Crude fiber 9%," borne on the label, was false and misleading in that it purported and represented that said article contained not less than 41 per centum of crude protein, and not less than 7½ per centum of crude fat, and contained not more than 9 per centum of crude fiber, whereas, in truth and in fact, said article contained less than 41 per centum of crude protein and 7½ per centum of crude fat, and contained more than 9 per centum of crude fiber, to wit, crude protein 36.25 per centum, crude fat 6.48 per centum, crude fiber 14.49 per centum. Misbranding was alleged for the further reason that the article was labeled, "Guaranteed Analysis: Crude Protein 41%, Crude Fat 7½%, Crude Fiber 9%," so as to deceive and mislead the purchaser into the belief that it contained not less than 41 per centum of crude protein, and not less than 7½ per centum of crude fat and contained not more than 9 per centum of crude fiber, whereas, in truth and in fact, the said article contained less than 41 per centum of crude protein and 7½ per centum of crude fat and contained more than 9 per centum of crude fiber, to wit, crude protein 36.25 per centum, crude fat 6.48 per centum, and crude fiber 14.49 per centum.

The cottonseed cake was labeled: (Tag), "100 lbs. Gross Guaranteed Analysis: Protein 41% to 43%; Ammonia 7½% to 8½%; Oil fat 6 to 7%; Manufactured by the Apache Cotton Oil and Manufacturing Company, Chickasha, Okla." (Reverse side of tag) "Net 99½ pounds Choice Cottonseed Cake Manufactured by Apache Cotton Oil & Mfg. Co., Chickasha, Okla. Guaranteed analysis: Crude protein 41%; crude fat 7½%; Nitrogen free extract 25%; crude fiber 9%."

Analysis of a sample of this product by said Bureau of Chemistry showed the following results:

Ether extract ("crude fat") (per cent)	6.37
Crude fiber (per cent)	13.40
Ammonia (N x 1.2158) (per cent)	7.43
Protein ("crude protein") (per cent)	38.19

Misbranding of this article was alleged in the information for the reason that the statement, to wit, "Choice Cottonseed Cake * * * Guaranteed analysis: Ammonia 7½% to 8½%; crude protein 41%; crude fat 7½%; crude fibre 9%," was false and misleading in that it purported and represented that said article was a high-grade cottonseed cake and contained not less than 7½ per centum of ammonia, not less than 41 per centum of crude protein, not less than 7½ per centum of crude fat, and not more than 9 per centum of crude fiber; whereas, in truth and in fact, said article was an inferior grade of cottonseed cake and contained less than 7½ per centum of ammonia, less than 41 per centum of crude protein, and less than 7½ per centum of crude fat; and contained more than 9 per centum of crude fiber, to wit, ammonia 7.43 per centum, crude protein 38.19 per centum, crude fat 6.37 per centum, and crude fiber 13.40 per centum. Misbranding was alleged for the further reason that the article was labeled, "Choice Cottonseed Cake; Guaranteed analysis: Ammonia 7½% to 8½%, crude protein 41%, crude fat 7½%, crude fiber 9%," so as to deceive and mislead the purchaser into the belief that said article, as understood by the trade and public generally, was a high-grade cottonseed cake and contained not less than 7½ per centum of ammonia, not less than 41 per centum of crude protein, not less than 7½ per centum of crude fat, and not more than 9 per centum of crude fiber, whereas, in truth and in fact, said article was an inferior grade of cottonseed cake and contained less than 7½ per centum of ammonia, less than 41 per centum of crude protein, and less than 7½ per centum of crude fat, and contained more than 9 per centum of crude fiber, to wit, ammonia 7.43 per centum, crude protein 38.19 per centum, crude fat 6.37 per centum, and crude fiber, 13.40 per centum.

On February 23, 1915, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $50.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *December 1, 1915.*

4088. Misbranding of "Imperial Feed." U. S. v. 27 Sacks * * * of Feed. Tried to the court and a jury without contest. Verdict finding product misbranded. Decree of condemnation. Product ordered sold. (F. & D. No. 5825. I. S. No. 22503-h. S. No. E-76.)

On July 31, 1914, the United States attorney for the Western District of South Carolina, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 27 sacks, more or less, each containing approximately 75 pounds of feed, remaining unsold in the original unbroken packages at Greenwood, S. C., alleging that the product had been shipped, on or about June 12, 1914, and transported from the State of Tennessee into the State of South Carolina, and charging misbranding in violation of the Food and Drugs Act. The sacks were labeled: "Imperial (Picture of Crown) Feed Manufactured from Pure Grain Products." The tags on the sacks were labeled: "75 lbs. Imperial Feed Guaranteed Analysis—Protein 13.00%—Fat 4.00%—Fiber 8.00%—Carbohydrates 60.18%. Ingredients: Wheat Bran, Wheat Shorts, Corn Meal, Corn Bran, Corn Screenings, Wheat Screenings. Manufactured by The Newport Mill Co., Loudon, Tenn."

Misbranding of the article was alleged in the libel for the reason that it contained less protein [and fat (?)] than was declared and printed upon the tag attached or affixed upon each of the 27 sacks. Misbranding was alleged for the further reason that the words and figures so declared and printed upon said tag were misleading and thereby the said feed was misbranded within the meaning of the act of Congress approved June 30, 1906.

On October 29, 1914, the case having come on for hearing before the court and a jury, and no claim, objection, or appearance having been made, after submission of evidence, the jury returned its verdict finding that the article was misbranded, and thereupon judgment of condemnation was entered, and it was ordered by the court that the product should be sold by the United States marshal.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *December 1, 1915.*

4089. Adulteration of milk. U. S. v. Ed. Renner. Plea of guilty. Fine, $25 and costs. (F. & D. No. 5826. I. S. Nos. 439-h, 442-h.)

On January 18, 1915, the United States attorney for the District of Kansas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Ed. Renner, Corliss, Kans., alleging shipment by said defendant, in violation of the Food and Drugs Act, on or about July 15, 1913, from the State of Kansas into the State of Missouri, of a quantity of milk which was adulterated.

Analyses of samples of the product by the Bureau of Chemistry of this department showed the following results:

	Organisms per cc.		B. coli group per cc.	Streptococci per cc.
	Plain agar, 25° C.	Litmus lactose agar, 25° C.		
Sample 1:				
No. 1	19,000	16,000	1,000	10,000
No. 2	20,000	15,000	1,000	100,000
Sample 2:				
No. 1	15,000	14,000	1,000	1,000,000
No. 2	17,000	15,000	1,000	1,000,000

Adulteration of the article was alleged in the information for the reason that said article was sold and delivered as and for pure milk, when, in truth and in fact, it consisted in part of filthy, decomposed, and putrid animal substances.

On April 8, 1915, the defendant entered a plea of guilty to the information, and the court imposed a fine of $25 and costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

Washington, D. C., *December 1, 1915.*

4090. Adulteration and misbranding of cognac (so called). U. S. v. 3 Cases containing 12 Bottles of Cognac (so called). Consent decree of condemnation and forfeiture. Product ordered released on bond. (F. & D. No. 5838. I. S. No. 26501-h. S. No. E-81.)

On August 3, 1914, the United States attorney for the District of Connecticut, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 12 bottles of cognac (so called), remaining unsold in the original unbroken packages at New Haven, Conn., alleging that the product had been shipped, on or about December 9, 1913, by Puziello, Luccaro & Co., Brooklyn, N. Y., and transported from the State of New York into the State of Connecticut, and charging adulteration and misbranding in violation of the Food and Drugs Act. The cases were labeled: "Fragile (and old guaranty legend, serial No. 12546) Old Brandy Cognac (shoulder sticker bearing three stars)." The bottles were labeled: "Old Quality Export Th Chattier (design, bunch of grapes) Cognac." The shoulder labels on the bottles bore three stars.

Adulteration was alleged in the libel for the reason that the article was not a brandy of the cognac type, but neutral spirits colored in imitation of brandy had been substituted in whole or in part, and had been mixed and packed with the brandy in such a manner as to reduce or lower or injuriously affect the quality and strength of the product.

Misbranding was alleged for the reason that the labels on the retail packages purported the product to be "Old Quality Export Cognac," and indicated that it was produced in the Cognac district of France, when, in truth and in fact, the product was an imitation cognac and consisted wholly or in part of neutral spirits colored in imitation of brandy, and in that the product was not of foreign origin.

On July 7, 1915, the said Puziello, Luccaro & Co., Brooklyn, N. Y., claimant, having consented to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the article should be redelivered to said claimant upon payment of all the costs of the proceedings and the execution of bond in the sum of $300, in conformity with section 10 of the act.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *November 26, 1915.*

4091. Misbranding of Dr. F. S. Hutchinson's "Anti-apoplectine." U. S. * * * v. Dr. B. J. Kendall Co. Plea of nolo contendere. Fine, $50. (F. & D. No. 5846. I. S. No. 12605-e.)

On July 10, 1915, the United States attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Dr. B. J. Kendall Co., a corporation, having its principal place of business at Enosburg Falls, Vt., and a branch office in the city of Philadelphia, Pa., alleging shipment by said company, in violation of the Food and Drugs Act, as amended, on or about February 25, 1913, from the State of Pennsylvania into the State of New York, of a quantity of Dr. F. S. Hutchinson's "Anti-Apoplectine" which was misbranded. The article was labeled: (On bottle) "Dr. F. S. Hutchinson's Anti-Apoplectine Prepared only by Dr. F. S. Hutchinson Co. Enosburg Falls, Vt. Contains Alcohol 21%. The Apoplexy and Paralysis Remedy For Apoplexy and Paralysis, relieves Rheumatism, Heart Disease, Chronic Bronchitis, Torpid Liver, Kidney and Bladder Troubles, Dyspepsia, etc., etc. If suffering from Dizziness or Pressure in Head, Spots before Eyes, Pain Around or Palpitation of Heart, Pain in Region of Heart with Feelings of Suffocation, Ringing Sound in Ears, Numbness or Prickly Sensation of Limbs, especially the Arm, Pain between Shoulders, and in Side, Dry Cough, Flatulence, Sour Stomach, or if suffering from General Debility with Loss of Appetite, &c., try a bottle. Directions. One-half to one teaspoonful three times daily after meals. To be taken well diluted with cold water. Price, $1.00 per bottle. Registered in the Patent Office at Washington, Dec. 7th, A. D. 1886, by Dr. F. S. Hutchinson & Co., of Enosburg Falls, Vt." "Anti-Apoplectine The Only Apoplexy Preventive and Paralysis Cure Dr. F. S. Hutchinson Co." (Blown in bottle). (On carton) "Dr. F. S. Hutchinson's Anti-Apoplectine Trade Mark. The Apoplexy and Paralysis Remedy Contains Alcohol 21%. For Apoplexy and Paralysis Relieves Rheumatism, Heart Disease, Kidney and Bladder Troubles, Chronic Bronchitis, Congested Liver, Biliousness, Dyspepsia, Etc., Etc. If suffering from Dizziness or Pressure in Head, Spots before Eyes, Pain around or Palpitation of Heart, Pain in region of Heart with Feelings of Suffocation, Ringing Sound in Ears, Numbness or Prickly Sensation of Limbs, especially the Arm, Pain Between Shoulders and in Side, Dry Cough, Flatulence, Sour Stomach, or if suffering from General Debility with Loss of Appetite, &c., &c., try a bottle. Directions. One-half to One Teaspoonful three times daily after meals. To be taken well diluted with cold water. Price One Dollar Per Bottle. Prepared only by Dr. F. S. Hutchinson & Co. Enosburg Falls, Vt. Registered in the Patent Office at Washington, Dec. 7th, A. D. 1886, by Dr. F. S. Hutchinson & Co., of Enosburg Falls, Vermont, Anti-Apoplectine. Anti-Apoplectine is a preparation that has long been in use by a physician of forty years active professional experience, and the claims that are made for it have been verified many times. It is a combination of remedies recognized by medical science for preventing Heart Clot and for preserving the integrity of the blood vessels, especially of the brain. It not only strengthens powerfully the debilitated muscular and nervous system, but those remedies acting most effectively upon the blood for the removal of clot and relief of Paralysis following cerebral hemorrhage, also relieves Torpid and Congested Liver, and modifies the tendency to Heart Disease, which so often follows Rheumatism. It effectually aids Torpid Congested Liver, Weak and Impaired Digestion, giving an Appetite, removing Acidity and Flatulence. For the pre-apoplectic state it is the best remedy known to us that for 25 years has stood the test. For the Relief of Paralysis, Following Apoplexy, Rheumatism, Heart Disease, Chronic Bronchitis, Liver Torpidity and Congestion, Dyspepsia, Loss of Appetite, and General Debility, it has no equal within our knowledge. Have you any of the following symptoms? If so, Anti-Apoplectine will relieve you, Dizziness or Pressure in Head, with periodical Headaches, Spots before Eyes, Ringing in Ears, Pain around or Palpitation of Heart,

especially if suddenly startled, Numbness or Prickly Sensation of Limbs, more often the Arm, Pain between the Shoulders and in Side, Sleepy feeling after meals, if appetite is good, Loss of Appetite and Strength, Acid Stomach, Dry Cough, Belching Wind, General Debility, &c., &c. None genuine without the signature Dr. F. S. Hutchinson & Co. Price, One Dollar a Bottle Six Bottles for Five Dollars."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

Alcohol (per cent by volume)	14.33
Solids (grams per 100 cc)	5.79
Ash (grams per 100 cc)	0.056
Ammonium chlorid (grams per 100 cc)	4.04
Alkaloids (unidentified) (grams per 100 cc)	0.005
Resin (probably podcphyllin) (grams per 100 cc)	0.035

Misbranding of the article was alleged in the information for the reason that the following statements regarding the therapeutic or curative effects thereof, appearing on the label aforesaid, to wit, (On bottle) "Anti-Apoplectine * * * The Apoplexy and Paralysis Remedy for Apoplexy and Paralysis, relieves Rheumatism, Heart Disease, * * * " (Blown in bottle) "The Only Apoplexy Preventive and Paralysis Cure" (On carton) "* * * Anti-Apoplectine. The Apoplexy and Paralysis Remedy * * * For Apoplexy and Paralysis Relieves Rheumatism, Heart Disease, * * * It is a combination of remedies recognized by medical science for preventing Heart Clot and for preserving the integrity of the blood vessels, especially of the brain, * * * those remedies acting most effectively upon the blood for the removal of clot and relief of Paralysis following cerebral hemorrhage * * * ," were false and fraudulent in that the same were applied to said article knowingly and in reckless and wanton disregard of their truth or falsity, so as to represent falsely and fraudulently to the purchasers thereof, and create in the minds of purchasers thereof the impression and belief, that it was, in whole or in part, composed of, or contained, ingredients or medicinal agents effective as a preventive of apoplexy and as a remedy for apoplexy and paralysis, and effective for the relief of rheumatism and heart disease, and effective for preventing heart clot, and for preserving the integrity of the blood vessels, especially of the brain, and effective for the removal of clot and relief of paralysis following cerebral hemorrhage, when, in truth and in fact, said article was not, in whole or in part, composed of, and did not contain, ingredients or medicinal agents effective as a preventive of apoplexy, or as a remedy for apoplexy and paralysis, or effective for the relief of rheumatism or heart disease, or effective for preventing heart clot, or for preserving the integrity of the blood vessels, especially of the brain, or effective for the removal of clot or for the relief of paralysis following cerebral hemorrhage.

On October 4, 1915, the defendant company entered a plea of nolo contendere to the information, and the court imposed a fine of $50.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *November 26, 1915.*

4092. Adulteration of milk. U. S. v. Frank Lobner. Plea of guilty. Fine, $25 and costs. (F. & D. No. 5852. I. S. No. 270-h.)

On January 1, 1915, the United States attorney for the District of Kansas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Frank Lobner, Rosedale, Kans., alleging shipment by said defendant, in violation of the Food and Drugs Act, on or about July 26, 1913, from the State of Kansas into the State of Missouri, of a quantity of milk which was adulterated. The product was labeled: "F. Lobner Please wash and return all bottles daily. Red Clover Dairy."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

Total solids by drying (per cent)	12.0
Fat by Babcock (per cent)	3.0
Protein (N x 6.38) (per cent)	3.57
Refraction of serum at 20° C.	42.5
Fat-free solids (per cent)	9.0
Nitrates: Negative.	

Adulteration of the article was alleged in the information for the reason that a valuable constituent of said article, to wit, fat, had been in part abstracted.

On April 8, 1915, the defendant entered a plea of guilty to the information, and the court imposed a fine of $25 and costs.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *November 26, 1915.*

4093. Misbranding of "Dr. Hale's Household Ointment." U. S. v. Henry O. Kenyon et al. (Kenyon & Thomas Co.). Plea of guilty. Fine, $10. (F. & D. No. 5855. I. S. No. 4540-e.)

On March 15, 1915, the United States attorney for the Northern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Henry O. Kenyon, Frank S. Kenyon, and Charles H. Kenyon, trading as Kenyon & Thomas Co., Adams, N. Y., alleging shipment by said defendants, in violation of the Food and Drugs Act, as amended, on or about February 19, 1913, from the State of New York into the State of Missouri, of a quantity of "Dr. Hale's Household Ointment" which was misbranded. The product was labeled: (On carton) "Dr. Hale's Household Ointment for General Use Kenyon & Thomas Co., Prop. Adams, N. Y. Price, 50 Cents. Relieves Pain Immediately. Guaranteed by Kenyon & Thomas Co., under the Food and Drugs Act, June 30, 1906. Serial No. 280. Directions Inside Kenyon & Thomas Co., Adams, N. Y. Proprietors." (On tin box) "Dr. Hale's Household Ointment for General Use No. 280. Guaranteed by Kenyon & Thomas Co. under the Pure Food and Drugs Act, of June 30, '06 Registered No. 5435. Kenyon & Thomas Co., Props. Adams, N. Y. Price, 50 Cents Relieves Pain immediately."

The circulars or pamphlets accompanying the product contained, among other things, the following: "An Infallible Remedy. Relieves all Pain Immediately. A Positive Specific for the Speedy and Permanent Cure of Rheumatism, Lame Back, Neuralgia, Headache, Sciatica. Salt Rheum, Eczema, Erysipelas, Ring Worm, Tetter, Scaly or Itching Eruptions of the Skin, and all Scaly Eruptions, Itching and Irritations of the Scalp, Scald Head, Scrofulous Ulcers, Sores and Discharging Wounds, Cuts, Wounds, Bruises, Scalds, Piles, Contraction of the Muscles and Cords, Sore Throat, * * * Croup and Hoarseness. * * *" "Inflamed Sore Eyes—Apply the Ointment to the temples and eye-lids, and sides of the nose. It takes out all inflammation and heals quickly." "For the Use of Ladies—For weak back it is most excellent. For ulceration of the Womb, Leucorrhœa or Inflamed condition of the parts apply the Ointment directly to the affected part. It is very soothing and healing and has effected remarkable cures."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

Residue on ignition: None.
Volatile material at 100° C. (per cent): 5.9.
Borax: None.
Salicylic acid: None.
Benzoic acid: None.
Camphor: Odor positive.

Ointment composed of vaseline and camphor with a small amount of aromatics resembling oil of thyme.

Misbranding of the article was alleged in the information for the reason that the following statements regarding the therapeutic or curative effects thereof, included in the circulars or pamphlets aforesaid, to wit, "An Infallible Remedy * * * A Positive Specific for the Speedy and Permanent Cure of Rheumatism, Lame Back, Neuralgia * * * Sciatica * * * Eczema, Erysipelas * * * and all Scaly Eruptions * * * Scrofulous Ulcers, Piles * * * Croup * * *," "Inflamed Sore Eyes— * * * It takes out all inflammation and heals quickly," "It has cured catarrh where all other known remedies have failed," "* * * For ulceration of the Womb, Leucorrhœa * * * It is very soothing and healing and has effected remarkable cures," were false and fraudulent in that, by means of said circulars or pamphlets, they were applied to said article knowingly, and in reckless and wanton disregard of their truth or falsity, so as to represent falsely and fraudulently

to the purchasers thereof, and create in the minds of purchasers thereof the impression and belief, that it was, in whole or in part, composed of, or contained, ingredients or medicinal agents effective, among other things, as an infallible remedy and positive specific for the speedy and permanent cure of rheumatism, sciatica, eczema, erysipelas, and all scaly eruptions, scrofulous ulcers, piles, and croup; and effective as a cure for catarrh, inflamed sore eyes, ulceration of the womb, and leucorrhea; when, in truth and in fact, said article was not, in whole or in part, composed of, and did not contain, ingredients or medicinal agents effective, among other things, as a remedy or specific for the cure of rheumatism, sciatica, eczema, erysipelas, or all scaly eruptions, scrofulous ulcers, piles, or croup; or effective for the cure of catarrh, inflamed sore eyes, ulceration of the womb, or leucorrhea.

On April 6, 1915, the defendants entered pleas of guilty to the information, and the court imposed a fine of $10.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *November 26, 1915.*

4094. Adulteration of milk. U. S. v. The Kansas Condensed Milk Co. Plea of guilty. Fine, $25 and costs. (F. & D. No. 5871. I. S. Nos. 216-h, 218-h, 219-h, 220-h.)

On March 2, 1915, the United States attorney for the District of Kansas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against The Kansas Condensed Milk Co., a corporation, Tonganoxie, Kans., alleging shipment by said company, in violation of the Food and Drugs Act, on or about July 21, 1913, from the State of Kansas into the State of Missouri, of a quantity of milk which was adulterated.

Examination of samples of the product by the Bureau of Chemistry of this department showed the following results:

	Organisms per cc., plain agar.		B. coli group per cc.	Streptococci per cc.
	25° C.	37° C.		
Sample 1:				
No. 1	20,000,000	10,000,000	100,000	100,000
No. 2	22,000,000	11,000,000	100,000	1,000,000
Sample 2:				
No. 1	19,000,000	17,000,000	100,000	100,000
No. 2	16,000,000	13,000,000	100,000	10,000
Sample 3:				
No. 1	11,000,000	7,000,000	1,000,000	100,000
No. 2	10,000,000	10,000,000	100,000	10,000
Sample 4:				
No. 1	17,000,000	15,000,000	100,000	100,000
No. 2	15,000,000	13,000,000	100,000	100,000

Adulteration of the article was alleged in the information for the reason that it consisted, in whole or in part, of a filthy, decomposed, and putrid animal substance.

On March 20, 1915, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $25 and costs.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *November 26, 1915.*

4095. Adulteration and misbranding of brandy and misbranding of ferro china bitters and of "Anisette." U. S. * * * v. 1 Case of Brandy, so called, 1 Case of Ferro China Bitters, and 1 Case of "Anisette." Consent decree of condemnation and forfeiture. Product ordered released on bond. (F. & D. No. 5383. I. S. Nos. 26517–h, 26518–h, 26519–h. S. No. E–96.)

On August 28, 1914, the United States attorney for the District of Connecticut, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 1 case of so-called brandy, 1 case of ferro china bitters, and 1 case of "Anisette," remaining unsold in the original unbroken packages at New Haven, Conn., alleging that the brandy had been shipped on or about August 12, 1914, the ferro china bitters, on or about May 6, 1914, and the "Anisette," on or about August 12, 1914, by Puziello, Luccaro & Co., Brooklyn, N. Y., and transported from the State of New York into the State of Connecticut, and charging adulteration and misbranding as to the brandy and misbranding as to the other two products, in violation of the Food and Drugs Act. The case containing the brandy was labeled: "Puziello, Luccaro & Co. Distellano Italiana, Brooklyn, N. Y. Fragile." The bottles were labeled: "Old Quality export Th Chattier (Design, bunch of grapes) Cognac." The case of ferro china bitters was labeled: "Ferro-China Fragile." The bottles were labeled: "Ferro-China Bevete Il Ferro (Design, tiger's head) Ferro China Bitters Liquore Tonico Iron Bitter Questo Liquore Fatto a base di Ferro e China con erbe molto benefiche per gli anemici, e per coloro che soffrono di inappetenza ecc. E 'raccomandato da celebrita' Mediche. This liquor is a compound of Iron-China and other herbs, benefitting those suffering from dyspepsia, lack of appetite, etc., and is recommended by medical celebrities. (Green background with white circles containing words 'Anti Malarico') (Coat of arms)." The case of "Anisette" was labeled: "Anice Fino Puziello, Luccaro & Co. Brooklyn, N. Y. Puz. Lac. & Co. Br. N. Y. Fragile." The bottles were labeled: "Distilleria and Fabricade Liquore Puziello, Luccaro & Co. Contents 28 ounces Anice Fino per Acqua Anice Superfine Specialita Di Raffaele Puziello Di Napoli Serial No. 12546 A. (picture of Columbus) Per Una Perfetta Digestione Volete Un Buon Bicchiere Di Liquore? Bevete Il Colombo Punch Liquore Insuperabile Che Si Puo Anche Usare Nel Latte, Nel Caffe Acqua Calda O Seltz. Specialita Di Raffaele Puziello, Di Napoli."

Adulteration of the so-called brandy was alleged in the libel for the reason that it was not a brandy of the cognac type, but that neutral spirits, colored in imitation of brandy, had been substituted in whole or in part and had been mixed and packed with the brandy in such a manner as to reduce or lower or injuriously affect the quality and strength thereof.

Misbranding of the brandy was alleged for the reason that the labels on the retail packages purported the product to be "Old Quality Export Cognac," and indicated that it was produced in the Cognac district of France, when, in truth and in fact, it was an imitation cognac and consisted wholly or in part of neutral spirits colored in imitation of brandy, and, further, for the reason that the product was not of foreign origin.

Misbranding of the ferro china bitters was alleged for the reason that the labels on the retail packages bore no statement announcing the quantity or proportion of alcohol contained therein, and, further, for the reason that the labels on the retail packages purported the product to be of foreign origin and indicated that it was produced in China, when, in truth and in fact, it was not of foreign origin.

Misbranding of the "Anisette" was alleged for the reason that the labels on the retail packages purported the product to be of foreign origin and indicated that it was produced in Italy, when, in truth and in fact, it was not of foreign origin.

On July 7, 1915, the said Puziello, Luccaro & Co., claimant, having filed its answer consenting that the issue in the case might be found for the United States, judgment of condemnation and forfeiture was entered and it was ordered by the court that the product should be delivered to said claimant upon payment of all the costs of the proceedings and the execution of bond in the sum of $300, in conformity with section 10 of the act.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *November 26, 1915.*

4096. Misbranding of "Lillybeck's Painacura." U. S. v. the Ellis-Lillybeck Drug Co. Plea of guilty. Fine, $25 and costs. (F. & D. No. 5886. I. S. No. 7188-c.)

On March 12, 1915, the United States attorney for the Western District of Tennessee, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Ellis-Lillybeck [Drug] Co., a corporation, Memphis, Tenn., alleging shipment by said company, in violation of the Food and Drugs Act, as amended, on or about March 15, 1913, from the State of Tennessee into the State of Arkansas, of a quantity of "Lillybeck's Painacura" which was misbranded. The product was labeled: (On carton) "Lillybeck's Painacura. The Best Pain Killer Alcohol 71% Chloroform 2-5 Minim, Phenylacetamide 2 Grains to Fluid Ounce Combining all the best qualities and surpassing any Antiseptic. Prepared from pure essential oils for internal or external use for Man or Beast. Directions Inside. Prepared by Lillybeck Drug Co. Wholesale Druggists and Manufacturers Memphis, Tenn. Copyrighted all rights reserved." (On sides) "A Superior Antiseptic Lillybeck's Painacura Guaranteed Pure and of Superior Quality. Lillybeck's Painacura Will Relieve in Five Minutes and Cure in a few applications any case of Rheumatism, Stiff Joints, Pain in the Back, Pain in the Heart, Stings of Insects, Bites, Bruises, Swellings, Snake Bites, Burns and Scalds, Neuralgia, Cramps, Colic, Diarrhœa, Flux, Cholera Morbus, Dysentery, Headache, Toothache, Earache, Etc. Will Cure Colic in Horses and Mules, Ringbone, Charbone and Screw Worm in Cattle. It is also a good remedy for Chapped Hands. It is a Safe and Sure Cure for Leucorrhœa and Whites. Painacura is a superior article to the many so called antiseptics now on the market, and is guaranteed to be superior to any preparation of its kind. Price 25 Cents. Painacura as well as all my other remedies are warranted to be just as represented and to give perfect satisfaction and if found not as represented your money will be cheerfully refunded. All genuine bear my signature Oscar Lillybeck." (On bottle) "Lillybeck's Painacura Alcohol 71% Chloroform 2-5 Minims to Fluid Ounce Rheumatism, Neuralgia, Headache, Toothache, Summer Complaint, Cholera Morbus, Flux, Diarrhœa, Colic, Cramps, Scalds, Burns, Bruises and all kinds of wounds. Directions for Internal use. Adult Dose one teaspoonful three or four times a day in water, sweetened with sugar, if preferred. Dose for a child 5 to 10 drops according to age. Dilute with water and sugar. For Colic in Horses or Mules give 15 to 20 teaspoonfuls in 1/2 pint of water. Manufactured by Lillybeck Drug Co. Wholesale Druggists. Memphis, Tenn." (Blown in bottle) "Lillybeck's Antiseptic."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

Alcohol (per cent by volume)	67
Acetanilid (grains per fluid ounce)	1.6
Chloroform (minims per fluid ounce)	2.3
Essential oils, peppermint: Present.	
Alkaloids: None.	

Misbranding of the article was alleged in the information for the reason that the same contained as an ingredient thereof, to wit, 0.357 per cent of acetanilid, and its package failed to bear on the label thereof a statement of the quantity or proportion of acetanilid so contained in said article. Misbranding was alleged for the further reason that the following statements regarding the therapeutic or curative effects of the article, appearing on the carton aforesaid, to wit, "Will relieve in Five Minutes and Cure in a few applications any case of Rheumatism, Stiff Joints, Pain in the Back, Pain in the Heart, Swellings, Colic, Diarrhœa, Flux, Cholera Morbus, Dysentery." * * * "It is a safe and sure cure for Leucorrhœa and Whites * * *," were false and fraudulent in that the same were applied to said article knowingly and in

reckless and wanton disregard of their truth or falsity, so as to represent falsely and fraudulently to the purchasers thereof, and create in the minds of the purchasers thereof the impression and belief, that it was, in whole or in part, composed of, or contained, ingredients or medicinal agents effective for the relief and cure, among other things, of rheumatism, pain in the heart, diarrhea, flux, cholera morbus, and dysentery, and effective for the cure of leucorrhea and whites, when, in truth and in fact, said article was not, in whole or in part, composed of, and did not contain, ingredients or medicinal agents effective for the relief and cure, among other things, of rheumatism, pain in the heart, diarrhea, flux, cholera morbus, dysentery, and effective for the cure of leucorrhea and whites.

On May 21, 1915, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $25 and costs.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *November 26, 1915.*

4097. Misbranding of liqueur. U. S. v. 3 Cases of Liqueur. Consent decree of condemnation and forfeiture. Product ordered released on bond. (F. & D. No. 5889. I. S. No. 26513-h. S. No. E-100.)

On August 28, 1914, the United States attorney for the District of Connecticut, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 3 cases, each containing 12 bottles of liqueur, remaining unsold in the original unbroken packages at Bridgeport, Conn., alleging that the product had been shipped, on or about August 11, 1914, by Puziello, Luccaro & Co., Brooklyn, N. Y., and transported from the State of New York into the State of Connecticut, and charging misbranding in violation of the Food and Drugs Act. The cases were labeled: "Anice Fino Puziello, Luccaro & Co., Brooklyn, N. Y. Fragile.—This case contains 12 bottles." The bottles were labeled: "Contents 28 ounces—Anice Fino Per Acqua—Anice Superfine (design)—Specialita Di Raffaele Puziello Di Napoli—Serial No. 12546 A. (picture of Columbus) Per una perfetta digestione Volete un Buon Bicchiere di Liquore? Bevete Il Colombo Punch—Liquore Insuperabile che si puo anche usare nel latte, nel caffe acqua calda o seltz. Specialita Di Raffaele Puziello Di Napoli." (Blown in bottle) "Distilleria & Fabricade Liquore Puziello Luccaro & Co."

Misbranding of the article was alleged in the libel for the reason that the labels on the retail packages purported the product to be of foreign [origin] and indicated that it was produced in Naples, when, in truth and in fact, the product was not of foreign origin.

On July 7, 1915, the said Puziello, Luccaro & Co., claimant, having filed its answer consenting to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be redelivered by the United States marshal to said claimant upon payment of all the costs of the proceedings and the execution of bond in the sum of $300, in conformity with section 10 of the act.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *November 26, 1915.*

4098. Misbranding of "Crest Brand Lemon." U. S. * * * v. Independence Coffee & Spice Co., a corporation. Plea of guilty. Fine, $20 and costs. (F. & D. No. 5900. I. S. Nos. 5343-e, 2538-h.)

On August 2, 1915, the United States attorney for the District of Colorado, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Independence Coffee & Spice Co., a corporation, Denver, Colo., alleging shipment by said company, in violation of the Food and Drugs Act:

(1) On or about November 12, 1912, from the State of Colorado into the State of New Mexico, of a quantity of "Crest Brand Lemon" which was misbranded. The product in this shipment was labeled: (Front of carton) "1 Ounce Crest Brand Lemon Manufactured by The Independence Coffee and Spice Co. Denver. (stamped under the word 'Lemon') 87% Alcohol." (Side of carton) "Complied with all the Pure Food Laws." (Flaps) "Pure Extract." (Back of carton) "1 ounce Crest Brand Pure Lemon Contains 50% Alcohol (stamped) 87% Alcohol Manufactured by The Independence Coffee and Spice Co. Denver." (Bottle label) "Crest Brand Pure Lemon The Independence Coffee and Spice Co. Denver."

Gauging of samples of said product by the Bureau of Chemistry of this department showed the following results:

Bottle.	Contents.	Variation.		Bottle.	Contents.	Variation.	
	Cc.	*Cc.*	*Per cent.*		*Cc.*	*Cc.*	*Per cent.*
1	28.5	−1.0	− 3.4	5	28.5	−1.0	−3.4
2	26.5	−3.0	−10.0	6	31.0	+1.5	+5.0
3	30.0	+0.5	+ 1.7	7	29.5	0.0	0.0
4	27.5	−2.0	− 6.4	8	28.5	−1.0	−3.4

Misbranding of this article was alleged in the information, for the reason that the following statement, to wit, "1 Ounce," appearing on the label aforesaid, was false and misleading, in that it indicated to the purchasers thereof that the package contained 1 ounce of the article of food, when in truth and in fact said package did not contain 1 ounce, but contained a less amount thereof, to wit, 97.2 per cent of 1 ounce. Misbranding was alleged for the further reason that the package of the article was labeled "1 ounce" so as to deceive and mislead the purchasers thereof into the belief that it contained 1 ounce of the article of food, when in truth and in fact the said package did not contain 1 ounce, but contained a less amount thereof, to wit, 97.2 per cent of 1 ounce.

(2) On or about May 28, 1913, from the State of Colorado into the State of Wyoming, of a quantity of "Crest Brand Lemon" which was misbranded. This product was labeled: (Carton, front and back) "Crest Brand Lemon 88 per cent Alcohol. 1 Ounce Manufactured by The Independence Coffee and Spice Co. Denver, Colo." (Sides) "Complied with all the Pure Food Laws. This extract being strictly pure and full flavor, use sparingly." (Top) "Lemon." (On bottle) "Crest Brand Pure Lemon The Independence Coffee and Spice Co., Denver."

Gauging of samples of this product by said Bureau of Chemistry showed the following results:

Bottle.	Contents.	Bottle.	Contents.	Bottle.	Contents.
	Cc.		*Cc.*		*Cc.*
1	24.0	13	29.0	25	27.5
2	28.5	14	28.0	26	27.0
3	23.5	15	28.5	27	4.0
4	27.5	16	24.0	28	29.0
5	28.0	17	26.5	29	27.5
6	24.5	18	26.5	30	26.0
7	30.5	19	27.0	31	28.0
8	26.0	20	27.0	32	27.0
9	28.0	21	27.0	33	26.0
10	28.5	22	27.0	34	24.5
11	27.5	23	28.0	35	27.0
12	25.5	24	25.0	36	[1]

[1] Broken.

Average (cc)	26.26
Omitting bottle 27, which had a leaky stopper (cc)	26.91
Liquid ounce (cc)	29.57
Average shortage (omitting bottle 27) (per cent)	9.0

Misbranding of this article was alleged in the information for the reason that the following statement, to wit, "1 ounce," appearing on the label of the package aforesaid, was false and misleading in that it indicated to the purchasers thereof that said package contained 1 ounce of the article of food, when, in truth and in fact, it did not contain 1 ounce, but contained a less amount thereof, to wit, 91 per cent of 1 ounce.

Misbranding was alleged for the further reason that the package of the article was labeled "1 ounce," so as to deceive and mislead the purchasers thereof into the belief that it contained 1 ounce of said article of food, when, in truth and in fact, the said package did not contain 1 ounce, but contained a less amount thereof, to wit, 91 per cent of 1 ounce.

On September 13, 1915, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $20 and costs.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *November 26, 1915.*

4099. Alleged adulteration of meat food products. U. S. * * * v. 15 Tons of * * * Meat Food Products * * *. Judgment of dismissal. Product ordered released. (F. & D. No. 5901. S. No. 1900-a.)

On May 20, 1913, the United States attorney for the District of Alaska filed in the District Court for the Territory and District of Alaska in the Fourth Judicial Division thereof, sitting as a district court of the United States, a libel for the seizure and condemnation of 15 tons of meat food products, alleged to have been diseased, adulterated, and deteriorated, consisting of pork and sausage, remaining unsold at Fairbanks, Alaska, alleging that the same was being offered for sale in the Territory of Alaska, and charging adulteration in violation of the Food and Drugs Act.

It was alleged in the libel that the product, consisting of pork and sausage, was, at the time the hogs were slaughtered or butchered, diseased, adulterated, and deteriorated to such a degree that the same was unfit for human consumption, and to such a degree as to render the same injurious and deleterious to the health of all persons purchasing and using the same; further, that said pork and sausage were the product of diseased animals, because the hogs, at the time they were slaughtered or butchered, had and were infected with swine pest fever, pneumonia, or cholera.

On April 24, 1915, a stipulation having been entered into for the dismissal of the proceedings and the destruction of a portion of the product and the release of the balance, the following judgment of dismissal was rendered by the court (Bunnell, *J*):

Upon reading and filing the stipulation of the respective parties hereto, to wit, on the part of the United States by R. F. Roth, Esq., United States attorney and proctor for libellant herein, and on the part of the claimant by Messrs. McGowan & Clark, proctors for said claimant, the Fairbanks Meat Co., a copartnership, to which stipulation is attached a copy of the report of Dr. J. Madsen, of the Bureau of Animal Industry, Department of Agriculture, inspector in charge at Seattle, Wash., after an examination of the meat and meat products mentioned in the libel of information herein; and it appearing from said stipulation and said report that no indications of hog cholera, swine-pest fever, or pneumonia were detected in any of the meat examined by said inspector; and it further appearing from said stipulation and said report that certain leaf lard and other exposed adipose tissue were found to be rancid and that two boxes of sausage evidenced a distinct sour cereal odor upon examination for wholesomeness; and it further appearing from said stipulation and report that none of the material allegations contained in the libel of information for condemnation filed herein are sustained, and that they can not be sustained by testimony, and that all the allegations contained in paragraphs I to IV, inclusive, of said libel of information filed herein are untrue, and that judgment dismissing this suit and proceeding with prejudice and without cost to either party as against the other shall now be entered, on motion of proctors for the claimant, Fairbanks Meat Co., a copartnership.

It is ordered, adjudged, and decreed by the court that the libel of information heretofore filed herein in behalf of the United States of America by the United States attorney for the Fourth Judicial Division, Territory of Alaska, be, and the same is hereby, dismissed, with prejudice and without costs to either party as against the other.

It is further ordered, adjudged, and decreed that the meat and meat products mentioned in said libel of information filed herein shall be returned to the claimant, Fairbanks Meat Co., a copartnership, from establishment No. 191, Frye & Co., Seattle, Wash., by delivering the same to the Pacific Cold Storage Co., a corporation, whose principal place of business is at Tacoma, Wash., such delivery to be made at said establishment 191, Frye & Co., Seattle, Wash., the said Pacific Cold Storage Co. being the agent of the Fairbanks Meat Co. aforesaid for the purpose of such delivery; and that at the time of such delivery said J. Madsen, the inspector in charge, as aforesaid, or any other officer with like authority, may cause to be destroyed such of said meat and meat products as in his judgment appears to be, at the time of such delivery, rancid or unwholesome; and that said Pacific Cold Storage Co., as agent of the Fairbanks Meat Co., a copartnership, accept delivery of the balance of said meat and meat products immediately upon receipt of a certified copy of this judgment of dismissal, or upon receipt of telegraphic advices thereof, at Seattle, Wash.; and

It is further ordered, adjudged, and decreed that the costs of storage of said meat and meat products at Seattle, Wash., and of said examination shall be paid by the

libellant, and that said meat and meat products shall be delivered, as aforesaid, without any cost, charge, or expense to the said claimant, the Fairbanks Meat Co., a copartnership.

Done in open court, at Fairbanks, Alaska, this 24th day of April, 1915.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *November 26, 1915.*

4100. Misbranding of "Locher's Renowned Rheumatic Remedy." U. S. v. Margaret Locher et al. (Locher and Wenger). Plea of guilty. Fine, $20. (F. & D. No. 5304. I. S. No. 9142-e.)

On May 14, 1915, the United States attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Margaret Locher and I. Lincoln Wenger, trading under the name of Locher & Wenger, Lancaster, Pa., alleging shipment by said defendants, in violation of the Food and Drugs Act, as amended, on or about March 21, 1913, from the State of Pennsylvania into the State of Maryland, of a quantity of "Locher's Renowned Rheumatic Remedy" which was misbranded. The article was labeled: (On dozen container) "One Dozen Bottles of Locher's Renowned—Rheumatic—Remedy. A Reliable Preparation for all Species of Rheumatism—Labeled to Comply with the Food and Drugs Act, June 30, 1906—Price, 35 Cents per Bottle.—Prepared only by Chas. A. Locher, Druggist, 9 East King Street, Lancaster, Pa. General Directions.—The Full Dose for Adults is 16 Drops, twice in 24 hours; but it is advisable to begin with 8 Drops only and gradually to increase to 16 Drops, as many people do not require Full Doses.—If you cannot obtain Locher's Renowned Rheumatic Remedy of your Druggist, send 50 cents in Postage Stamps to pay for Patented Mailing Case and Postage. Address, Charles A. Locher, Druggist, No. 9 East King St., Lancaster, Pa." (On bottle) "Locher's Renowned Rheumatic Remedy, Alcohol 53%. A reliable preparation for all species of Rheumatism. Directions:—For an adult 16 drops; child 12 years old, 6 drops; child 4 years old, 3 drops; to be taken in a little water at 9 or 10 A. M., and 9 or 10 P. M. Should the above doses seem too strong for some patients, they may be reduced. Price 35 cts. per bottle. Prepared only by Chas. A. Locher, Druggist, No. 9 East King St. Lancaster, Pa." (Blown in bottle) "Locher's Renowned Rheumatic Remedy, Lancaster, Pa." (On carton) "Locher's Renowned Rheumatic Remedy Alcohol 53%. A Reliable Preparation for all species of Rheumatism. Directions inside. Price 35 Cents. Prepared only by Charles A. Locher, Druggist, 9 E. King Street, Lancaster, Pa. This valuable preparation combines all the medicinal virtues of those articles, which long experience has proven to possess the most safe, efficient qualities, for the cure of all Rheumatic Complaints. We can show hundreds of testimonials from parties who have been cured by the use of this remedy, some of them having been compelled to use crutches for a long time. Lancaster, Pa., March 21, 1878. On demand for value received, I promise to pay to bearer One Mill. Chas. A. Locher. The above note of hand is my protection against counterfeits, which to imitate is a State Prison offence."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

Alcohol (per cent by volume)	50.6
Nonvolatile substance (grams per 100 cc)	4.45
Ash (grams per 100 cc)	0.105
Colchicin: Present.	
Menthol: Present.	
Plant extractives: Large amount present.	
Salicylates: Absent.	
Arsenic: Absent.	
Emodin: Absent.	
Potassium iodid: Absent.	

Misbranding of the article was alleged in the information for the reason that the following statements regarding the therapeutic or curative effects thereof, appearing on the labels aforesaid, to wit, (On dozen container) "Locher's Renowned—Rheuma-

tic—Remedy. A Reliable Preparation for all species of Rheumatism," (On carton) "Locher's Renowned Rheumatic Remedy * * * This valuable preparation combines all the medicinal virtues of those articles, which long experience has proven to possess the most safe, efficient qualities, for the cure of all Rheumatic Complaints. We can show hundreds of testimonials from parties who have been cured by the use of this remedy * * *," were false and fraudulent in that the same were applied to said article knowingly and in reckless and wanton disregard of their truth or falsity so as to represent falsely and fraudulently to the purchasers thereof, and create in the minds of purchasers thereof the impression and belief, that it was, in whole or in part, composed of, or contained, ingredients effective for the treatment, prevention, and cure of all species of rheumatism, when, in truth and in fact, said article was not, in whole or in part, composed of, and did not contain, ingredients effective for the treatment, or cure of all species of rheumatism.

On June 18, 1915, the defendants entered pleas of guilty to the information, and the court imposed a fine of $20.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *December 4, 1915.*

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